



Interoffice Memorandum

AGENDA ITEM

DATE: June 26, 2020

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

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

CONTACT PERSON: Eric Raasch, DRC Chairman *ERM*
Development Review Committee
Planning Division
(407) 836-5523

SUBJECT: July 28, 2020 — Consent Item
Adequate Public Facilities Agreement for West Orange
Environmental Resources C&D Disposal & Recycling Facility /
Communication Tower PD
Case # APF-19-08-288 / District 1
(Related to Case # LUP-19-01-044)

The proposed West Orange Environmental Resources C&D Disposal & Recycling Facility / Communication Tower PD Planned Development (PD) contains 44.02 gross acres (0.137 acre net developable) and is located generally north of Schofield Road and west of Avalon Road. The subject property is located within the Town Center Special Planning Area of Horizon West and is designated as Open Space on the Town Center Special Planning Area Land Use Map. Through rezoning application # LUP-19-01-044, the West Orange Environmental Resources C&D Disposal & Recycling Facility / Communication Tower PD proposes a 140-foot tall communication tower and an existing landfill.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West PD is required to convey their proportionate share of Adequate Public Facilities (APF) lands, which are based on the ratio of required APF acres to net developable acres within the Special Planning Area. For the Town Center Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 5.1. 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 Board resolution 2014-M-09. Alternately, they may receive a transfer of surplus APF credits from another property owner in the same Village.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the West Orange Environmental Resources C&D Disposal &

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Adequate Public Facilities Agreement for West Orange Environmental Resources C&D Disposal & Recycling Facility / Communication Tower PD (Case #APF-19-08-288)
(Related to Case # LUP-19-01-044)

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the West Orange Environmental Resources C&D Disposal & Recycling Facility / Communication Tower PD is subject to an APF Agreement that recognizes that the project is responsible for a minimum of .027 acres of APF lands. A payment of \$1,217 in lieu of conveyance of APF lands will satisfy this APF requirement.

The Adequate Public Facilities Agreement for West Orange Environmental Resources C&D Disposal & Recycling Facility / Communication Tower PD received a recommendation of approval from the Development Review Committee on February 12, 2020 and has been placed on the March 10, 2020 consent agenda to be pulled for consideration with the associated PD Land Use Plan. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County.

ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for West Orange Environmental Resources C&D Disposal & Recycling Facility/Communication Tower PD by and between OCE West Orange, LLC and Orange County. District 1

JVW/EPR/jhs
Attachments

BCC Mtg. Date: July 28, 2020

This instrument prepared by and after
recording return to:
Mary D. Solik, Esq.
121 S. Orange Avenue, Ste. 1500
Orlando, FL 32801
Tax Parcel I.D. No(s): 29-23-27-0000-00-008

**ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR WEST ORANGE ENVIRONMENTAL RESOURCES C&D DISPOSAL &
RECYCLING FACILITY/COMMUNICATION TOWER PD**

THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR West Orange Environmental Resources C&D Disposal & Recycling Facility/Communication Tower PD (the "Agreement"), effective as of the latest date of execution (the "Effective Date"), is made and entered into by and between OCE West Orange, LLC, a Florida limited liability company, with its principal place of business at P. O. Box 1298, Winter Park, FL 32750 ("Owner") and ORANGE COUNTY, a charter county and political subdivision of the State of Florida whose mailing 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 generally depicted in Exhibit "A" and as more particularly described in Exhibit "B," both of which exhibits are attached hereto and made a part hereof by this reference (The "PD Property").

B. The PD Property, also known as West Orange Environmental Resources C&D Disposal & Recycling Facility/Communication Tower PD is identified in the Orange County Comprehensive Plan 2010-2030 (the "Comprehensive Plan") Future Land Use Map with the "Village" land use designation and constitutes a portion of Town Center, in Horizon West, 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") on December 14, 2004 (the Town Center SAP").

C. The PD 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.

D. The West Orange Environmental Resources C&D Disposal & Recycling Facility/Communication Tower PD has relied on the prior approvals of the Horizon West Study and the Town Center SAP, and on the Town Center SAP approvals and studies included in the SAP.

E. The Town Center SAP contemplates certain park uses within the PD Property.

F. OWNER desires to develop the PD Property in accordance with the West Orange Environmental Resources C&D Disposal & Recycling Facility/Communication Tower PD/LUP, submitted by OWNER to COUNTY, and with the PD zoning application on file with COUNTY., Case Number LUP-19-010-044.

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 amended.

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

I. The parties have agreed that this Agreement constitutes the aforementioned Developer’s agreement referenced in Division 2 of the APF/TDR Ordinance.

J. 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, at Section 30-714(g), allows for application of APF acreage credits to satisfy an APF deficit.

K. It is the intent of the parties that COUNTY will consider approval of the West Orange Environmental Resources C&D Disposal & Recycling Facility/Communication Tower PD/LUP with its consideration of this Agreement.

L. The PD Property contains approximately 6,000 square feet (0.137 acre) of **net** developable land, and both the Town Center SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public facilities acreage for every 5.1 acres of net developable land (the “APF Ratio”).

M. When applied to the PD Property, the APF Ratio equals approximately .027 acres of public facilities lands.

N. As shown on the West Orange Environmental Resources C&D Disposal & Recycling Facility/Communication Tower PD Land Use Plan, and as described in this Agreement, OWNER is not providing any acreage of adequate public facilities land (the "APF Land") to COUNTY, thereby creating an APF deficit of .027 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. APF Deficit. The West Orange Environmental Resources C&D Disposal & Recycling Facility/Communication Tower PD APF Ratio requires that Owner convey to County approximately .027 acre(s) of APF Land. This Agreement does not provide for conveyance of approximately .027 acre(s) of APF Land, thereby creating a .027 acre APF Deficit.

3. APF / Fee. OWNER will pay to COUNTY an APF Fee of \$45,064.23 per acre, for .027 acre(s), for a total of One Thousand Two Hundred Seventeen Dollars and Ten Cents (\$1,217.10), to account for the .027 acre APF deficit, representing OWNER'S full and final APF contribution for the PD Property. OWNER understands and agrees that payment of the APF Fee shall occur prior to or in connection with Planned Development approval.

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

5. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering 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 PD 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 the APF Land and/or any portion of the PD 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.

6. 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 PD Property and be binding upon any person, firm, corporation, or other entity acquiring any interest in all or any portion of the PD Property.

7. 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.

8. 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

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

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

OWNER: OCE West Orange, LLC
Post Office Box 1298
Winter Park, FL 32750

9. 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.

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

11. 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.

12. 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.

13. Survival. The obligations of this Agreement shall survive the satisfaction of the APF Deficit by OWNER.

14. Amendment. 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.

15. 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.

16. 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.

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

18. Termination; Effect of Annexation. This Agreement shall remain in effect so long as the PD Property remains in unincorporated Orange County, Florida, unless the Parties terminate it, in writing, with the same formality as its execution. If any portion of the PD Property is proposed to be annexed into a neighboring municipality, County may, in its sole discretion, terminate this Agreement upon notice to Owner.

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.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

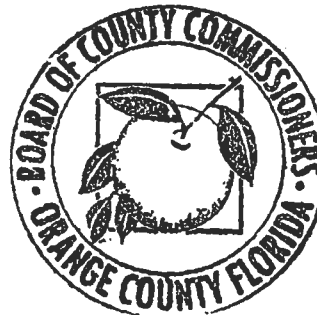
By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: JUL 28 2020

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Printed Name: **Katie Smith**



OCE West Orange, LLC,
a Florida limited liability corporation

By: OCE Landfill Management, Inc., a Florida corporation,
its Manager

By: [Signature]
Print Name: Ross Johnston
Title: President
Date: June 29, 2020

WITNESSES:

[Signature]

Print Name: GREGORY LEE

[Signature]

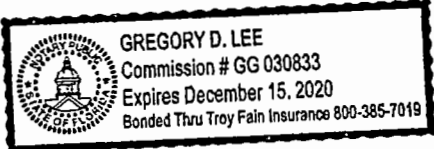
Print Name: Lara T. Lee

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Ross Johnston, as President of OCE Landfill Management, Inc., a Florida corporation, Manager of OCE West Orange, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 29th day of June, 2020. She/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 29th day of JUNE, 2020.

[Signature]



Notary Public
Print Name: _____
My Commission Expires: _____

Exhibit "A"

Project area location map
(_1_ page(s) follow)

Vicinity Map (Not to Scale)

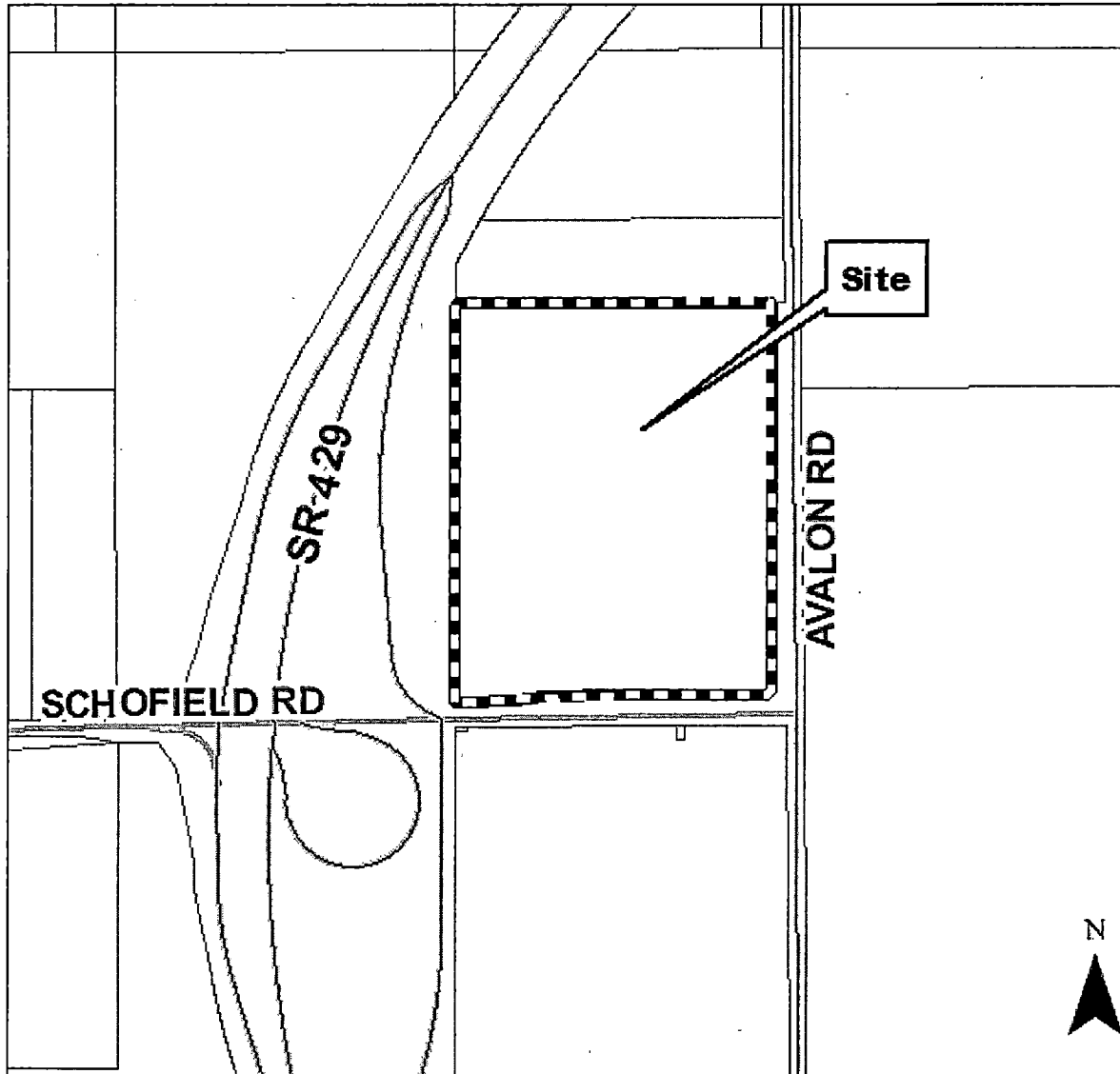
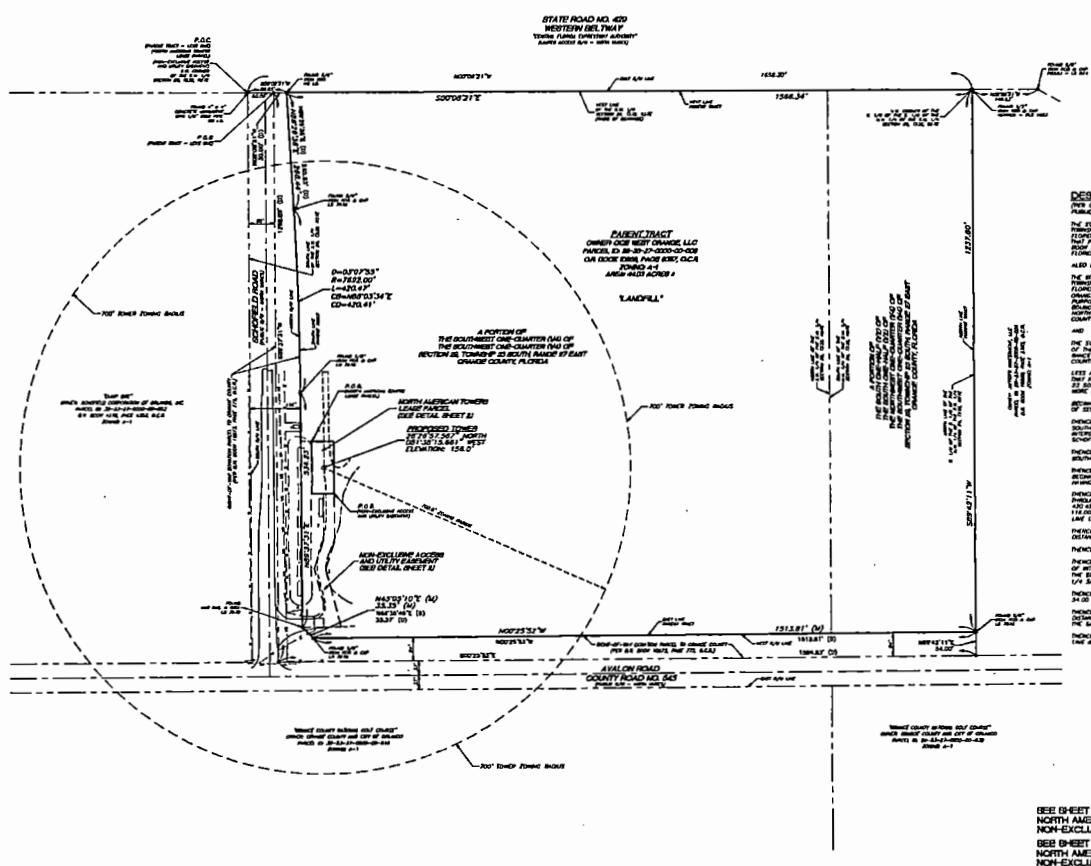


Exhibit "B"

Legal Description and Sketch of
Description for the PD Property
[1_ page follow]

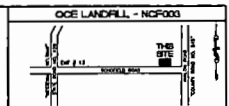
SKETCH OF PARENT TRACT BOUNDARY
 7623 AVILON ROAD, WINTER GARDEN, FL 34787
OCE LANDFILL - NCF003



TOWER SETBACK TABLE

Direction	Setback (ft)
NORTH	100.00
EAST	100.00
SOUTH	100.00
WEST	100.00

DESCRIPTION OF PARENT TRACT
 THE PARENT TRACT IS A PORTION OF THE SOUTHWEST 1/4 OF SECTION 28, TOWNSHIP 22 SOUTH, RANGE 22 WEST, COUNTY OF ORANGE COUNTY, FLORIDA.



LEGEND

Symbol	Description
Circle with dot	SPOT ELEVATION
Circle with cross	WATER SERVICE
Circle with horizontal lines	WATER MAIN
Circle with vertical lines	SEWER MAIN
Circle with diagonal lines	SEWER SERVICE
Circle with wavy lines	WATER METER
Circle with 'X'	WATER VALVE
Circle with 'S'	SEWER VALVE
Circle with 'E'	ELECTRIC METER
Circle with 'L'	ELECTRIC SERVICE

PROPOSED TOWER INFORMATION
 THE PROPOSED TOWER IS TO BE LOCATED AT THE INTERSECTION OF THE CENTER LINE OF THE PARENT TRACT AND THE CENTER LINE OF THE AVILON ROAD.

REPORT OF BOUNDARY AND TOPOGRAPHIC SURVEY
 THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING AND MAPPING ACT OF 2002, CHAPTER 349, FLORIDA STATUTES.

REPORT OF BOUNDARY AND TOPOGRAPHIC SURVEY
 THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING AND MAPPING ACT OF 2002, CHAPTER 349, FLORIDA STATUTES. THE SURVEY WAS CONDUCTED BY WILLIAM S. PATHE, LICENSED SURVEYOR, PROFESSIONAL SURVEYING & MAPPING, INC., ORANGE COUNTY, FLORIDA.

FLOOD ZONE INFORMATION

County Number	Parcel Number	Map Sheet	Date of Flood Zone	Map Scale
120178	0218	F	05/21/2008	1"=100'

DATE	BY	REVISION
12/18/2013	WSP	
08/20/2013	WSP	
07/11/2013	WSP	

SEE SHEET 2 OF 3 FOR DETAIL OF NORTH AMERICAN TOWERS LEASE PARCEL NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT

SEE SHEET 3 OF 3 FOR DESCRIPTION OF NORTH AMERICAN TOWERS LEASE PARCEL NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT

MAP OF BOUNDARY AND TOPOGRAPHIC SURVEY
OCE LANDFILL - NCF003
 PREPARED BY:
NORTH AMERICAN TOWERS, LLC
 1000 N. W. 10TH AVENUE
 ORANGE COUNTY, FLORIDA

PROJECT NO.
17-1257

SHEET NO.
1 OF 3