

MEMORANDUM

TO: Orange County Board of County Commissioners

FROM: Daniel T. O’Keefe, Esq.

DATE: May 19, 2025

RE: *Tuscana – Orange County Comp Plan Compliance*

This memorandum analyzes the application to develop that certain real property described in the Tuscana Land Use Plan (LUP) / Planned Development (PD) (collectively, the “Property”) and addresses how the proposed development is consistent with Orange County’s (the “County”) Comprehensive Plan.

Summary of Entitlements and Requests

The Property consists of a 227.48+/- acre site generally located south of Central Florida Parkway, west of South John Young Parkway, and east of International Drive, within the I-Drive Activity Center. The Property is designated as Activity Center Mixed Use (ACMU) and Activity Center Residential (ACR) on the Future Land Use Map which both require Planned Development (PD) District Zoning to allow for development. A portion of the Property also lies within a Conservation overlay and is located within Shingle Creek Hydrolic Basin.

The Applicant proposes to rezone the Property from A-2 (Farmland Rural District) to PD (Planned Development) in order to construct up to 653,400 square feet of commercial uses, 1,631 hotel rooms, and 5,244 multi-family dwelling units. Four waivers are requested from Orange County Code regarding building and paving setbacks and building height.

The four waivers from the Orange County Code (the “Code”) allow for a reduced building separation requirements for buildings internal to the PD; and increased maximum building height for multi-family to 150 feet to be consistent with the surrounding development approvals within the tourist commercial districts. The justification for the height waiver is to cluster the development in order to minimize the wetland impacts within the Shingle Creek Basin (analyzed further below).

Adequate avoidance and minimization of impacts have been sufficiently demonstrated. The proposed development for this Property also demonstrates an overriding public benefit, adequate transportation and access, and the requested intensity and waiver requests allow for a dense and unified mixed-use development.

2025-05-20 Public Hearing L11 and H12 Exhibit 1 - Dan O'Keefe

Pursuant to that certain staff report for project Case # LUP-22-01-002 prepared by the Orange County Planning Division for the Planning and Zoning Committee heard on April 24, 2025 (the "Staff Report"), which considers approval of the proposed Tuscana Land Use Plan, the proposed development shall comply with provisions of the County's Comprehensive Plan. The Development Review Committee recommended denial of the proposed development program at its meeting on April 2, 2025, although no specific reason was given and no inconsistencies with the Comprehensive Plan were specified to support the motion to deny. In fact, before voting, one of the DRC voting members said that although the application met all of the county requirements, she still could not vote in favor of it.

Comprehensive Plan Consistency

The Staff Report alleged that the proposed development is inconsistent with the following comp plan policies, but remarkably, it fails to specify any facts or matters in the record that support their conclusion of inconsistency. The following analysis addresses how the proposed development adheres to and furthers such policies, goals, and objectives.

- **GOAL C1- Orange County shall conserve, protect, and enhance the County's natural resources including air, surface water, groundwater, vegetative communities, imperiled species, soils, floodplains, recharge areas, wetlands, and energy resources to ensure that these resources are preserved for the benefit of present and future generations.**

Analysis:

The proposed Development will feature extensive environmental protection and open space features throughout the Development. The Development will have a total of 71.00 Ac. of open space consisting of amenity, conservation, buffering, stormwater, and general open space. The development has been clustered to the north towards Westwood Blvd. to lessen impacts to the Shingle Creek basin, as 121 acres of land within the PD boundary are proposed as preservation/open space and that does not allow for vertical development. The residential phase of the Development will contain at least 25% open space and the commercial portion will contain at least 20% open space, and such open spaces will be owned and maintained by an approved entity. The Conservation areas will allow for trails, gathering spaces, and other passive recreation. The Development will include substantial buffering along public rights-of-way, the Development boundaries, and wetlands within the Development.

The Tuscana PD Mitigation (the "Mitigation Plan") consists of both on-site and off-site wetland and upland buffer preservation as mitigation for impacts associated with the Tuscana development plan. A conservation easement dedicated to Orange County will be placed over both on-site and off-site preservation areas. The preservation areas will be maintained and monitored by the Permittee for five years. At the end of the five-year period and when the off-site preservation has been deemed successful by SFWMD and OCEPD, the off-site preservation lands will be donated to SFWMD. The on-site wetland preservation and upland buffers area will remain in the Permittee ownership for perpetual maintenance. By consolidating the development footprint and also consolidating the conservation lands, this Project will allow meaningful maintenance and preservation of the conservation and wetland properties. The current scattered ownership of much

of the conservation property prevents effective maintenance of the such properties, such as management of invasive plant species and/or prescribed burns.

- **C1.2.15- Orange County shall identify areas within the County that are susceptible to impacts associated with nutrient loadings from specific activities including lawn and turf fertilizer application and reclaimed water irrigation. These susceptible areas shall include but are not limited to: Total Maximum Daily Load (TMDL) impaired waterbodies, Outstanding Florida Waters, Outstanding National Resource Waters, waterbodies with declining water quality associated with nutrient loads and areas adjacent to surface water conveyance systems that drain to a waterbody of special interest. The County will make efforts to reduce the potential impacts from these specific activities. The identified areas will also be used for planning and future use considerations.**

Analysis:

Adequate avoidance and minimization of impacts have been sufficiently demonstrated. The project demonstrates a reasonable use of the land and adequate minimization or elimination of wetland impacts.

The Property, which is subject to Conservation Area Determination (CAD) #22-01-009, has 56.61 acres of Class I wetlands, 0.08 acres of Class III wetlands, and 170.85 acres of uplands. Following the December 18, 2024 DRC meeting, the applicant reduced the proposed wetland impact acreage by 22.970 acres (from 59.28 acres to 36.31 acres). Applicant further reduced the proposed wetland impact by an additional 13.886 acres (from 36.31 acres to the current 22.44 acres). The applicant is currently requesting 22.363 acres of direct impacts to Class I wetlands, 0.08 acre of direct impacts to Class III wetlands, and 28.035 acres of secondary impacts. Roughly 20 acres of the impacts are proposed solely for the two entrance roads and associated stormwater infrastructure providing access into the upland development. This second access road was required by the County for fire safety reasons. Other impacts are to the edges of the wetlands that fall within the boundary of the site. Mitigation for the wetland impacts includes the preservation of 34.249 acres of on-site wetlands and 115.771 acres of off-site wetlands for a total of 150 acres of preservation. All mitigation lands are proposed to be dedicated to Orange County via a conservation easement and the offsite lands are proposed to be subsequently donated to the SFWMD.

Prior to final development plan approval, Applicant will work with EPD staff along with Stormwater Management Division and Development Engineering to identify where impacts can be further minimized adjacent to the entry roads and through alternative road alignments, subject to review by SFWMD and FFWCC. This will require extensive engineering work and can not be done at zoning.

Applicant acknowledges that the Shingle Creek Basin, listed as an impaired waterbody (for macrophytes) and is environmentally sensitive as the headwaters of the Florida Everglades. If the proposed development shall be required to have its own Municipal Separate Storm Sewer Program (MS4), the permittees will develop and implement an adequate stormwater management program.

The uniqueness of this mitigation plan and development ensures that future development and future expansion will not occur. The loss of functions provided by the proposed wetland impacts are offset with an ecologically beneficial mitigation plan that serves the goals of Orange County which consists of preserving the Shingle Creek watershed and creating more conservation lands within the County.

- **OBJ C1.3- Orange County shall protect the natural functions of floodplains and flood zone areas to maintain flood-carrying and flood-storage capacities and to protect life and property, and Orange County shall continue to maintain its eligibility in the National Flood Insurance Program.**

Analysis:

Applicant acknowledges that most of the proposed development is within FEMA-mapped flood zone. Applicant has provided detailed plans regarding how compliance with County floodplain standards will be met in the site plan. **NEED TO ADD CONCLUSION RE: MORE STORAGE POST DEVELOPMENT, THEREFORE WILL IMPROVE THE FLOODING IN THE AREA.**

- **C1.3.1 – Orange County shall continue to improve and enforce the Orange County Floodplain Management Ordinance by requiring compensatory storage for encroachment in floodplains, restricting encroachment in floodways, and requiring habitable structures to be flood proofed.**

Analysis:

Compensatory storage for the project, which lies within the 1% annual chance floodplain (100-year floodplain), will be provided on a “cup-for-cup” basis, per Chapter 19-107(1). An Environmental Report will be submitted to Development Engineering Staff to establish the seasonal high-water elevation. Compensatory storage calculations will account for the volume between the seasonal high-water elevation and the base flood elevation. Applicant will also provide an updated survey to determine the current existing grade and accurate compensatory storage.

- **FLU 6.4.5 – The Land Development Code shall provide regulations for the protection and conservation of wildlife listed as endangered, threatened, or species of special concern, and their occupied habitat, floodplains, and the natural function of wetlands.**

Analysis:

Applicant acknowledges that acoustic monitoring in the Shingle Creek Management Area has identified the following species:

- Three types of bat species. The roosting locations of these bats are not known, and the federal guidance for roosting occurrence around verified acoustic recordings is 1.5 miles. It is possible that these special status bats are roosting in the southern part of the watershed near Shingle Creek.

- Applicant acknowledges that the area may serve as a foraging range for black bears, red-cockaded woodpeckers, and identified plant species.
- There are three known bald eagle locations within the vicinity of the development. However, Nest #OR014, which is closest to the Property, appears to have been inactive this nesting season according to aerial drone reconnaissance performed by the applicant.
- The proposed development will comply with all federal, state and local laws, rules and regulations regarding threatened and endangered species.

Pursuant to the Tuscana PD Mitigation Plan, the following Invasive Species Control program will be implemented to eliminate and/or control invasive plant species within the wetland preservation and upland buffers area:

1. Scheduled maintenance events will occur quarterly (Years 1-5).
 2. Invasive species on the current FLEPPC List will be mechanically removed (such as by hand removal, light hand equipment, etc.) whenever possible, Chemical application will occur if no other removal technique seems practical.
 3. All reasonable efforts will be taken to limit local impacts while performing necessary maintenance activities.
 4. Long-term maintenance of the proposed wetland will be maintained according to the following success criteria:
 - a. Photographic documentation
 - b. Schedule and Annual Reports
 - c. Vegetation Monitoring
 - d. Wildlife Utilization
- **FLU 6.5.7 – Orange County shall provide for compatible public and/or private land uses adjacent to significant natural resources that are managed for public benefit. Methods of protection to be considered may include, but shall not be limited to, coordination with appropriate State agencies, Notice of Proximity, the use of density and intensity limitations on land use and development, and the use of buffers.**

Analysis:

The development is a compatible land use adjacent to significant natural resources. Applicant has proposed a development that is the most compact, practical, and reasonable use of the lands that benefits both the residents of Orange County and the economic use of the Property, while ensuring a large scale ecologically beneficial preservation plan. The significant acreage of mitigation lands will be providing perpetual high-quality upland and wetland forested systems for wildlife denning, nesting, foraging, and corridor functions, as well as downstream benefits to Shingle Creek basin. The proposed site plan has been designed to utilize and combine available uplands of multiple lots under its current ownership to avoid wetland impacts in a purposeful and reasonable use of the land. The development is adjacent to the SFWMD Shingle Creek Management Area and additional adjacent parcels are under existing SFWMD Conservation Easements. Portions of the proposed development are located adjacent to these preservation areas and the applicant proposes both on-site and off-site wetland and upland buffer preservation as mitigation for impacts associated with the Tuscana development plan. Although the proposed use of the development as commercial/retail, hotel, and multi-family is a high intensity use, the future

land use designation of this Property is part of the International Drive Activity Center which promotes both mixed-use and residential uses. The existing future land use designations of ACMU and ACR include minimum required densities on the Property. The proposed use is consistent with the future land use designation and provides for adequate preservation pursuant to the Mitigation Plan.

- **C1.4.1 – Orange County shall continue to adopt and enforce regulations that protect and conserve wetlands and surface waters as defined in Orange County Code. Such regulations shall include criteria for identifying the functional habitat value of wetlands or surface waters.**
 - **When encroachment, alteration, or removal of a wetland or surface water is permitted, habitat compensation or mitigation as a condition of development approval shall be required. The basis for mitigation shall be determined by using Uniform Mitigation Assessment Method (UMAM) as the basis for evaluation, integrating any new rules and regulations into existing County programs.**

Analysis:

The Tuscana PD Mitigation consists of both on-site and off-site wetland and upland buffer preservation as mitigation for impacts associated with the Tuscana development plan. A conservation easement dedicated to Orange County will be placed over both on-site and off-site preservation areas. The preservation areas will be maintained and monitored by the Permittee for five years. At the end of the five-year period and when the off-site preservation has been deemed successful by SFWMD and OCEPD, the off-site preservation lands will be donated to SFWMD. The on-site wetland preservation and upland buffers area will remain in the Permittee ownership for perpetual maintenance. Further, the Invasive Species Control program will be implemented pursuant to the Mitigation Plan to eliminate and/or control invasive plant species within the wetland preservation and upland buffers area.

- **C1.4.9 – An upland buffer of a minimum of 25 feet is recommended, unless otherwise stated elsewhere in Orange County Code or in the Orange County Comprehensive Plan for all wetland systems unless scientific data dictate a larger or smaller buffer based on wetland function or local conditions. This shall be incorporated into Chapter 15 of the Orange County Code.**

Analysis:

Applicant proposes upland buffers to meet C1.4.9. Applicant is providing mitigation for secondary impacts to a depth of 50 feet within remaining wetlands and a 25-foot buffer is being provided. Upland buffers are also being proposed adjacent to off-site wetlands to protect adjacent preserved conservation lands offsite to mitigate any adverse secondary impacts. Applicant is providing mitigation for secondary impacts up to 75 feet into the adjacent wetlands offsite.

- **Goal 5- New land uses will be compatible with environmental protection within and adjacent to the International Drive Activity Center; and**

- **OBJ 5.1 – In order to minimize adverse development impacts, the County will pursue adoption of land development regulations to ensure land use compatibility and environmental protection within and adjacent to the International Drive Activity Center.**

Analysis:

The Site has a Future Land Use designation of ACMU (Activity Center Mixed Use) and ACR (Activity Center Residential) and is within a Conservation FLU overlay designation.

The current site plan is the most practical and reasonable use of the development area because it concentrates development along Westwood Blvd. and clusters proposed development adjacent to the commercial, multi-family and retail facilities that already exist along International Drive. The most reasonable areas of wetlands have been proposed for impact with a less intense development plan that is balanced with an overall mitigation plan that seeks to fulfill SFWMD preservation goals for Shingle Creek.

- **C1.5.4 – Orange County shall incorporate regulations into the Land Development Code concerning soils and their suitability for future development. These regulations shall include restricting development in areas with hydric soils, preservation of groundwater recharge areas, and controlling the location of individual on-site sewage disposal systems.**

Analysis:

Development is restricted in areas of the Property with known hydric soils (W15 and W7 on the site plan). The applicant is currently requesting 22.363 acres of direct impacts to Class I wetlands, 0.08 acre of direct impacts to Class III wetlands, and 28.035 acres of secondary impacts. Much of these impacts are proposed solely for the two entrance roads and associated stormwater infrastructure providing access into the upland development. All wetlands that were originally preferred wetlands to avoid are now proposed for preservation. Other impacts are to the edges of the wetlands that fall within the boundary of the site. Mitigation for the wetland impacts includes the preservation of 34.249 acres of on-site wetlands and 115.771 acres of off-site wetlands for a total of 150 acres of preservation. Prior to final development plan approval, Applicant will work with EPD staff along with Stormwater Management Division and Development Engineering to identify where impacts can be further minimized adjacent to the entry roads and through alternative road alignments and design.

- **ID5.1.1 – Buffer techniques and varied development densities and intensities shall be employed to ensure land use compatibility and provide transitional land use activities within and adjacent to the International Drive Activity Center consistent with the objective.**

Analysis:

Proposed development has been located away from contiguous residential property through the provision of native/natural landscaped vegetative buffers. The development has been clustered

to the north towards Westwood Blvd. to lessen impacts to the Shingle Creek basin, as 121 acres of land within the PD boundary are proposed as preservation/open space and that does not allow for vertical development. The residential phase of the Development will contain at least 25% open space and the commercial portion will contain at least 20% open space, and such open spaces will be owned and maintained by an approved entity. The Conservation areas will allow for trails, gathering spaces, and other passive recreation. The Development will include substantial buffering along public rights-of-way, the Development boundaries, and wetlands within the Development.

- **PS2.2.3 – Unless otherwise prohibited or precluded by existing development patterns, Orange County shall support and encourage the location of new elementary, K-8, and middle schools, internal to new and existing residential neighborhoods and the County shall coordinate with the Orange County School Board to identify locations for new high schools on the periphery of residential neighborhoods, where access to major roads is available; and**
- **PS2.2.5 – Support and coordinate with School Board efforts to locate new elementary schools within reasonable walking distance of the dwelling units served by the school.**
- **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.**

Analysis:

Orange County Public Schools (OCPS) staff has provided a formal School Capacity Determination (OC-23-053) which states that capacity is needed at the elementary and middle school. The capacity determination expired on April 16, 2024, but was extended to a new expiration date of April 17, 2028. OCPS calculated school capacity without utilizing the greatly reduced student generation tables applicable to a midrise project and the Applicant will work with OCPS to determine the reduced impact on school capacity. Further, applicant will continue to work with Orange County Staff and OCPS to support and coordinate efforts to locate new elementary schools within reasonable walking distance of the dwelling units served by the school and to enter a school capacity enhancement agreement, as necessary.

Other Justification for Approval:

The development will provide an **overriding public benefit:**

- The development would represent a significant level of capital investment, provide significant permanent job creation with Orange County and additional retail services for tourists.

- As the tourism and residential community continue to grow, there is a strong demand for commercial services and residential homes that the Tuscana development will satisfy. The development site is located on International Drive and has immediate access to SR-417, SR-528, and I-4.
- Over the last 32 years, SFWMD and other agencies have preserved 584 acres of land within the Munger Tracts. The proposed mitigation plan will immediately add approximately 320 acres of wetlands and uplands to these preserved lands. This development alone will provide one-half of this acreage with this one application.
- Without this development, the proposed preservation lands will not be preserved. This applicant has proposed a development that is the most compact, practical, and reasonable use of the Shingle Creek Co-Owners lands that benefits both the residents of Orange County and the tourism of Orlando while ensuring a large scale ecologically beneficial preservation plan.
- The mitigation lands will be providing perpetual high-quality upland and wetland forested systems for wildlife denning, nesting, foraging, and corridor functions, as well as downstream benefits to Shingle Creek basin. The mitigation lands also provide for a more contiguous and compact preservation management footprint which will facilitate the ongoing maintenance of such properties.
- The proposed site plan has been designed to utilize and combine available uplands of multiple lots under the Shingle Creek Co-Owners ownership to avoid wetland impacts in a purposeful and reasonable use of the land.

The development will have **adequate Transportation/Access:**

The proposed development is projected to generate approximately 5,000 gross PM vehicle trips. The proposed development includes two full access points on Westwood Blvd., which, according to the plans, will be constructed with median openings following the FDOT access management standards. The future Westwood Blvd. will have access to International Drive, which currently shows an acceptable Level of Service (LOS) C in the CMS report. This study assesses the impact of the proposed development on the surrounding area and ensures that the traffic generated can be adequately managed.

The assemblage of parcels allows for multiple access points along Westwood Blvd. The Low Impact Development Strategies exhibit was also provided with the Conceptual Plan, which provides intended measures to ensure a walkable, mixed-use and multi-modal development. Alternative mobility options are available outside of the project along the I-Drive corridor in which the applicant team intends to coordinate connections that will work in tandem with facilities provided internal to the development.

The LUP's requested waivers allow for a **dense and unified mixed-use development:**

Requested waivers from Orange County Code:

- Section 38-1287(1) requested for a minimum building setback of 15 feet from ROWs (Westwood Blvd) in lieu of 30 feet;

- Section 38-1287(2) requested to allow for a 0 feet side setback in lieu of 10 feet when the side is internal to the development;
- Section 38-1287(3) requested to allow for a 0 feet rear setback in lieu of 20 feet when the rear is internal to the development;
- Section 38-1287(5) requested to allow a 7.5 foot paving setback for ROW (Westwood Blvd) in lieu of 25 ft; and 0 foot paving setback for pedestrian facilities only for side lot lines in lieu of 7.5 feet internal to the PD;
- Section 38-1300 requested to allow the max building height for multi-family to be 200 feet in lieu of 60 feet, but 35 feet within 100 ft of single-family residential.

The requested waivers allow the development to create more of a street presence and interaction with the public from the ROW. The placement of the buildings (which are intended to include garage parking) being closer to the ROW allows for more open space throughout the development and enhances the overall pedestrian experience. Being within the tourist commercial district, a majority of the users for the hotel will travel to and from the development by means of ridesharing, rental cars, buses, and train. Based on a parking program of 1,860 spaces, 35 bicycle parking spaces and 10 bike lockers would be provided in lieu of 187 standard bicycle parking spaces. The requested waivers allow for a more vertically integrated project, as the proposed development is being clustered to minimize impacts to the shingle creek basin and therefore more height is necessary to accommodate the proposed density. The proposed multi-family buildings are not located within 100 ft of single family uses. Furthermore, the requested height is consistent with surrounding development approvals within tourist commercial and ACU/AMU future land uses.

Attached is a memorandum on this topic prepared by Delisi Land Use Planning & Water Policy which further addresses compliance with the County Comp. Plan.



TUSCANA PLANNED DEVELOPMENT

Consistency with the Comprehensive Plan

The proposed Tuscana Planned Development is located south of International Drive in southern Orange County. The Planned Development area is part of a historic permitted plat, the "Munger Plat" and has been designated for urban levels of development in the Orange County Comprehensive Plan since at least the early 1990s.

Orange County staff, in their staff report, have noted several policies which it agrees the Planned Development application is consistent with, several policies that staff has incorrectly stated the project is inconsistent with and has omitted several policies that are directly applicable to the proposed development. Taken as a whole the Comprehensive Plan directs development to the location of the Tuscana Planned Development and the proposed application meets the letter and intent of the Goals, Objectives and Policies in the Comprehensive Plan.

Comprehensive plan policies are shown below in **bold** with narrative on how the project is consistent with each policy under in *italics*.

I. Policies where staff and the applicant agree on consistency

GOAL FLU2 - URBAN STRATEGIES. Orange County will encourage urban strategies such as, but not limited to, infill development, coordinated land use and transportation planning, and mixed-use development, which promote efficient use of infrastructure, compact development and an urban experience with a range of choices and living options.

The proposed development is located in one of the most intensely developed areas of Orange County. There is urban development to the north and west along International Drive. Additionally, the Munger Plat is bisected and this property is bound on the south by State Road 417, with International Drive to the north and west. The proposal is for a compact mixed use development which expands the range of choices and living options in the area. The development is located in an area where infrastructure already exists to serve the proposed development, implementing Orange County's overall urban strategy.

OBJ FLU8.2 - COMPATIBILITY. Compatibility will continue to be the fundamental consideration in all land use and zoning decisions. For purposes

of this objective, the following policies shall guide regulatory decisions that involve differing land uses.

The proposed development is in an area where there are essentially no existing residential neighborhoods. Compatibility with surrounding uses is not at issue.

FLU1.4.1 - Orange County shall ensure that land use changes are compatible with and serve existing neighborhoods.

The proposed development is in an area where there are essentially no existing residential neighborhoods. Compatibility with surrounding uses is not at issue.

FLU8.2.2 - Continuous stretches of similar housing types and density of units shall be avoided. A diverse mix of uses and housing types shall be promoted.

The proposed development includes high rise residential units that extend south from the Westwood Boulevard extension. These units provide for a diversity of housing types in the area and a unique residential form. The proposed units represent a form of housing distinct from nearby development.

II. Policies Orange County staff omitted from the Staff Report which are consistent with the application

GOAL FLU1 URBAN FRAMEWORK. Orange County shall implement an urban planning framework that provides for long-term, cost-effective provision of public services and facilities and the desired future development pattern for Orange County. (Goal One-r)

OBJ FLU1.1 Orange County shall use urban densities and intensities and Smart Growth tools and strategies to direct development to the Urban Service Area and to facilitate such development. The Urban Service Area shall be the area for which Orange County is responsible for providing infrastructure and services to support urban development.

FLU1.1.2 The Future Land Use Map shall reflect the most appropriate densities for residential development.

The County is obligated to reflect the most appropriate densities for properties on the future land use map. The County has done this. The application that was filed has a proposed density and commercial intensity consistent with the future land use map reflect urban levels of development on the subject property.

D. INTERNATIONAL DRIVE ACTIVITY CENTER – The following two Future Land Use designations are located only in the International Drive Activity Center. More information about the ACR and ACMU Future Land Use designations are found in the International Drive Activity Center Element, which is a separate and optional element in the Comprehensive Plan.

FLUM Designation	General Description	Density/Intensity
I – Drive – Refer to International Drive Activity Center Element		
Activity Center Residential (ACR)	As described in the I-Drive element, ACR facilitates residential development in proximity to employment areas to minimize travel distances between uses. Intended to promote workforce housing for tourist-oriented employment. Establishes 50,000 square feet of non-residential neighborhood support per development. A PD is required.	Up to 30 DU/AC, minimum 12 DU/AC Non-residential 10,000 SF per 125 units with a maximum of 50,000 square feet total of non-residential per development*
Activity Center Mixed Use (ACMU)	As described in the I-Drive element, ACMU is a mixture of tourist-related development and supportive residential activity. No more than 30% of a site designated ACMU shall be for residential purposes. A PD is required.	Non-residential FAR 3.0* Hotel/motel lodging 60 rooms/acre (see note) Up to 30 DU/AC with a maximum of 30% of the site in residential use (see note)
<p>* The maximum FAR or square footage does not include floor area within a parking structure associated with the parking requirements for the principal use.</p> <p>Note: More than 60 hotel/motel rooms per acre or more than 30 DU/AC may be permitted if it can be demonstrated: an increase in traffic impact on the adjoining road network does not occur; and, the developable land area required for the residential portion of the development does not exceed a maximum of 30 percent of the total developable land area of the subject property.</p>		

181 acres of the subject property are within the activity Center Residential future land use category with 46 acres in the Activity Center Mixed Use. Both of the land use categories are among the most intense in the Orange County Comprehensive Plan and include a minimum of 12 units/acre of residential development. The table below from the proposed Land Use Plan submittal demonstrates compliance with these future land use categories. These categories require implementation through the Planned Development process. The current zoning of A-2 is not a zoning category that the County deems consistent with these future land use categories.

ENTITLEMENT PRODUCTION/ALLOCATION**						
	PARENT PARCEL [AC]	SUB PARCEL AREA [AC]***	FLU DESIGNATION	DEVELOPMENT PROGRAM	PROPOSED DENSITY/ INTENSITY	MAX. DENSITY/ INTENSITY PERMITTED
PD NET DEVELOPABLE	187.01					
HOTEL (ROOMS)		21.52	ACMU	1,291	59.99	60 rm/acre
COMMERCIAL (SF)		5.00	ACMU	653,400	3.00	3.0 FAR
RESIDENTIAL (DU)		12.57	ACMU*	377	29.99	30 du/acre
RESIDENTIAL (DU)		147.92	ACR	4,437	30.00	30 du/acre
TOTAL		187.01				

Notes:

* 30% of the developable land area within ACMU can be used for multi-family

** The acreages in the table are for entitlement production only and uses may be utilized across the entire PD area shown for development.

*** The above sub-parcel area excludes 6.22 acres of right-of-way within the property boundary. Refer to the Existing right-of-way note below.

III. Policies Orange County staff has incorrectly stated that the application is inconsistent with

GOAL C1 - Orange County shall conserve, protect, and enhance the County's natural resources including air, surface water, groundwater, vegetative communities, imperiled species, soils, floodplains, recharge areas, wetlands, and energy resources to ensure that these resources are preserved for the benefit of present and future generations.

Note: Staff provides no factual basis for this conclusion of inconsistency.

Goal C1 does not have any regulatory direction. Chapter 163 of the Florida Statutes requires that comprehensive plans "shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations." Goals by themselves rarely provide a meaningful or predictable standard for development and in accordance with statutory construction, are implemented by Objectives, which are implemented by Policies. There are no Objectives or Policies under Goal C1 that the project is inconsistent with. The project therefore cannot be inconsistent with Goal C1.

Furthermore, the proposed development avoids wetland impacts and preserves over 34 acres of wetland area on site. The proposal for development at this location is the result of an effort to preserve additional land within the Munger Plat outside of the Planned Development Area in order to implement that County and South Florida Water Management District's goals of land conservation. Approval of this Planned Development will implement that long term land preservation strategy.

C1.2.15 - Orange County shall identify areas within the County that are susceptible to impacts associated with nutrient loadings from specific activities including lawn and turf fertilizer application and reclaimed water irrigation. These susceptible areas shall include but are not limited to: Total Maximum Daily Load (TMDL) impaired waterbodies, Outstanding Florida Waters, Outstanding National Resource Waters, waterbodies with declining water quality associated with nutrient loads and areas adjacent to surface water conveyance systems that drain to a waterbody of special interest. The County will make efforts to reduce the potential impacts from these specific activities. The identified areas will also be used for planning and future use considerations.

Note: Staff provides no factual basis for this conclusion of inconsistency.

Policy C1.2.15 is specific to lawn and turf fertilizer application and reclaimed water irrigation within impaired waterbodies. The subject property is within the Lake Okeechobee watershed and is therefore in an impaired watershed. However, there is nothing in this application that would suggest any proposed lawn or turf fertilization that is greater than county standards or at levels that would have any negative impact to the TMDL for Lake Okeechobee, or that the project will have any greater nutrient discharge than any other similar property in Orange County. It is important to note that the entire County south of State Road 408 is within the Lake Okeechobee Watershed and would be similarly subject to this policy.

Regardless, the proposed development has been evaluated for water quality impacts by the South Florida Water Management District and issued an environmental resource permit by providing reasonable assurance that State and Federal water quality standards will be met. The project is not asking for any deviation from any local water quality standard and will therefore need to meet any Orange County water quality criteria as well as State and Federal criteria. Further, the applicant has committed to incorporating low impact development (LID) techniques into the detailed site design of the project. These design elements serve to enhance the traditional water quality features of the site, providing additional filtration of nitrogen and phosphorus (the limiting nutrient in the Lake Okeechobee TMDL) from stormwater runoff. The project is therefore committing to water quality enhancements above and beyond current County requirements and beyond other projects that have been found consistent with this policy.

OBJ C1.3 - Orange County shall protect the natural functions of floodplains and flood zone areas to maintain flood-carrying and flood-storage capacities and to protect life and property, and Orange County shall continue to maintain its eligibility in the National Flood Insurance Program.

C1.3.1 – Orange County shall continue to improve and enforce the Orange County Floodplain Management Ordinance by requiring compensatory storage for encroachment in floodplains, restricting encroachment in floodways, and requiring habitable structures to be flood proofed.

Note: Staff provides no factual basis for this conclusion of inconsistency.

Objective C1.3 is implemented by Objective C1.3.1. Any development of the property within the floodplain will be required by this policy and the County's implementing land development regulations to provide compensatory storage for encroachment in floodplains. The applicant is in agreement with this and has demonstrated how compensatory storage can be provided at final site plan approval when these details are required. The County has land development regulations on compensatory storage for encroachment in floodplains which the applicant must comply with in order to be granted a permit. The applicant is not asking for any deviations from these requirements.

The project is not within a floodway. To the extent that County regulations require flood proofing of structures, the applicant will commit to do so consistent with this policy.

FLU6.4.3 - All actions taken by the County with regard to development orders shall be consistent with Conservation Element Policy C1.4.1 and the regulations adopted pursuant thereto with respect to wetland protection.

Note: Staff provides no factual basis for this conclusion of inconsistency.

See response to Policy C1.4.1 below.

FLU6.4.5 - The Land Development Code shall provide regulations for the protection and conservation of wildlife listed as endangered, threatened, or species of special concern, and their occupied habitat, floodplains, and the natural function of wetlands.

Note: Staff provides no factual basis for this conclusion of inconsistency.

It is Orange County's obligation under Policy FLU 6.4.5 to provide/adopt regulations. The applicant is meeting these regulations through the delineation of wetland and wildlife habitat areas, minimizing impacts to those areas and mitigating where impacts cannot be avoided. All of these actions are in accordance with the specific regulations in the Orange County Code and consistent with prior approved permits under the same regulations throughout Orange County.

FLU6.4.7 - Orange County shall provide for compatible public and/or private land uses adjacent to significant natural resources that are managed for public benefit. Methods of protection to be considered may include, but shall not be limited to, coordination with appropriate State agencies, Notice of Proximity, the use of density and intensity limitations on land use and development, and the use of buffers.

Note: Staff provides no factual basis for this conclusion of inconsistency.

The only public lands nearby the proposed development are owned and managed by the South Florida Water Management District (SFWMD). There are lands near the project that are in active management and lands adjacent to the site that the SFWMD owns but are unable to manage based on the patchwork of ownership within the Munger Plat. There has been significant coordination with the SFWMD on the proposed development. The SFWMD specifically designated this area (with input from Orange County) for future development in order to consolidate a larger contiguous conservation area so that the SFWMD could actively manage environmentally sensitive properties within the overall Munger Plat. The SFWMD followed up this agreement through issuing an environmental resource permit for the subject property, which permitted development on the area of the proposed application in exchange for conservation properties throughout the Munger Plat giving them larger contiguous areas to manage for the public benefit consistent with FLU 6.4.7. Therefore, the proposed development application, as it

implements a long standing conservation goal of the SFWMD through it's dedication of additional conservation lands, directly implements this policy.

Note: Staff provides no factual basis for this conclusion of inconsistency.

C1.4.1 - Orange County shall continue to adopt and enforce regulations that protect and conserve wetlands and surface waters as defined in Orange County Code. Such regulations shall include criteria for identifying the functional habitat value of wetlands or surface waters.

When encroachment, alteration, or removal of a wetland or surface water is permitted, habitat compensation or mitigation as a condition of development approval shall be required. The basis for mitigation shall be determined by using Uniform Mitigation Assessment Method (UMAM) as the basis for evaluation, integrating any new rules and regulations into existing County programs.

Note: Staff provides no factual basis for this conclusion of inconsistency.

The proposed application has made every effort to avoid and minimize impacts to wetlands. The development plan proposes impacts in areas only where avoidance is not practical. 20 of the approximately 22.4 acres of wetland impacts are for the two required entry roads into the development. This level of avoidance and minimization is consistent with past permitting under Orange County's regulations. The impacted wetlands are being mitigated for using the Uniform Mitigation Assessment Method (UMAM), consistent with this policy.

C1.4.9 - An upland buffer of a minimum of 25 feet is recommended, unless otherwise stated elsewhere in Orange County Code or in the Orange County Comprehensive Plan for all wetland systems unless scientific data dictate a larger or smaller buffer based on wetland function or local conditions. This shall be incorporated into Chapter 15 of the Orange County Code.

Note: Staff provides no factual basis for this conclusion of inconsistency.

All upland buffers meet or exceed this requirement.

Goal 5 - New land uses will be compatible with environmental protection within and adjacent to the International Drive Activity Center.

OBJ 5.1 - In order to minimize adverse development impacts, the County will pursue adoption of land development regulations to ensure land use compatibility and environmental protection within and adjacent to the International Drive Activity Center.

Note: Staff provides no factual basis for this conclusion of inconsistency.

Objective 5.1 is implemented by several policies, none of which are inconsistent with the proposed development. The Objective also directs the County to adopt land development regulations to implement the Objective of land use compatibility and environmental protection. This is a directive to the County, not a meaningful or predictable standard for development. Any proposed development would need to meet or exceed the land development regulations adopted to implement this Objective. Therefore the proposed development must be consistent with Objective 5.1

C1.5.4 - Orange County shall incorporate regulations into the Land Development Code concerning soils and their suitability for future development. These regulations shall include restricting development in areas with hydric soils, preservation of groundwater recharge areas, and controlling the location of individual on-site sewage disposal systems.

Note: Staff provides no factual basis for this conclusion of inconsistency.

Policy C1.5.4 directs the County to adopt land development regulations. This is a directive to the County, not a meaningful or predictable standard for development. The proposed development meets or exceeds the land development regulations and is not asking for any deviation from any land development regulation adopted pursuant to Policy C1.5.4. These land development regulations include various design standards,, all of which will need to be met by any proposed final site development plan. Therefore the proposed development must be consistent with Objective C1.5.4.

ID5.1.1 - Buffer techniques and varied development densities and intensities shall be employed to ensure land use compatibility and provide transitional land use activities within and adjacent to the International Drive Activity Center consistent with the objective.

Note: Staff provides no factual basis for this conclusion of inconsistency.

Consistent with Policies FLU 8.2.2 and FLU 1.4.1, which staff agrees that the application is consistent with, the proposed development is compatible with surrounding uses and provides a unique and varied housing type along the corridor. There are no specific land use activities within and adjacent to the International Drive Activity Center that the proposed development will create a compatibility impact on. In this case, natural buffers and physical distance ensures compatibility with Policy ID 5.1.1.

PS2.2.3 - Unless otherwise prohibited or precluded by existing development patterns, Orange County shall support and encourage the location of new elementary, K-8, and middle schools, internal to new and existing residential

neighborhoods and the County shall coordinate with the Orange County School Board to identify locations for new high schools on the periphery of residential neighborhoods, where access to major roads is available.

Note: Staff provides no factual basis for this conclusion of inconsistency.

The applicant has reached out to the Orange County School District on several occasions to discuss location of a school site, but has not been granted a meeting. PS2.2.3 neither requires the conveyance of school sites by private property owners, nor does it require that a property owner contact the school district to discuss location of school sites as has been done by the applicant. There is no predictable or meaningful standard within the policy to be consistent or inconsistent with. However, the applicant has stated publicly that it is willing to discuss the location of a school site along the Westwood Boulevard extension.

PS2.2.5 – Support and coordinate with School Board efforts to locate new elementary schools within reasonable walking distance of the dwelling units served by the school.

Note: Staff provides no factual basis for this conclusion of inconsistency.

The applicant has reached out to the Orange County School District on several occasions to discuss location of a school site, but has not been granted a meeting. PS2.2.3 neither requires the conveyance of school sites by private property owners, nor does it require that a property owner contact the school district to discuss location of school sites as has been done by the applicant. There is no predictable or meaningful standard within the policy to be consistent or inconsistent with. However, the applicant has stated publicly that it is willing to discuss the location of a school site along the Westwood Boulevard extension.

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.

Note: Staff provides no factual basis for this conclusion of inconsistency.

According to the Orange County Public Schools District (OCPS), high rise development has a student generation rate of 0.013 students per unit. Distinct from midrise multi-family development and other forms of attached dwelling units, high rise developments typically attract older couples without children or young professionals. The proposed form of development meets

*the School District's criteria for the definition of high rise development, both in height/stories and in net density. Therefore the proposed development will generate an estimated 63 students (4,814 units *0.013 students/unit). It is important to note that this is a preliminary analysis based on the preliminary information evaluated at the time of Planned Development Approval, which is why this policy is not typically justification for the denial of Planned Development applications. For this specific case, 63 students is a de minimis impact to the school system.*

IV. Conclusion

As demonstrated above, the proposed application is consistent with the Goals, Objectives and Policies of the Comprehensive Plan. Through its plan, Orange County directs development to the subject property at densities and intensities that are in line with the proposed planned development. Furthermore, the specific land use categories require a minimum residential density and the implementation of the land use categories through a Planned Development application, which is the process that the project is going through.

Denial of the application would be inconsistent with the Property Rights Element of the Orange County Comprehensive Plan. **Goal PRE1** and **Policies PRE1.1.1, PRE1.1.2 and PRE 1.1.3** require the County to consider constitutionally protected, judicially acknowledged and statutorily protected property rights in local decision making. The future land use map is clear in the rights allowed, and Chapter 163 F.S. is clear that any zoning action must be consistent with the local comprehensive plan. Therefore, denial of the proposed application will be directly contrary to the policies implementing Goal PRE1.