



Orange County Government

Orange County
Administration Center
201 S Rosalind Ave.
Orlando, FL 32802-1393

Legislation Text

File #: 24-1477, **Version:** 1

Interoffice Memorandum

DATE: September 19, 2024

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: N/A

FROM: Tanya Wilson, AICP, Director, Planning, Environmental and Development Services Department

CONTACT: Joe Kunkel, P.E., DRC Chairman

PHONE: (407) 836-7971

DIVISION: Planning Division

ACTION REQUESTED:

Approval and execution of Adequate Public Facilities Agreement Hartzog Road Attainable Housing Community PD by and between Walt Disney Parks and Resorts U.S., Inc. and ARDC-Ocala 201, LLC and Orange County. District 1. (Development Review Committee)

PROJECT: Adequate Public Facilities Agreement for Hartzog Road Attainable Housing Community Planned Development (PD) Case # APF-24-08-206 / District 1

PURPOSE: The Hartzog Road Attainable Housing Community PD contains 56.50 net developable acres and is generally located south of Hartzog Road and east of County Road 545. Through Comprehensive Plan Future Land Use Map Amendment 2023-3-A-1-1 and PD Rezoning Case LUP-23-06-183, the applicant is proposing to expand the Horizon West Special Planning Area Village H boundary to incorporate the property and assign the Horizon West Land Use designation of Apartment District for the developable areas, while the remainder of the property will be designated Wetland.

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 Village H Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 7.6. 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. Alternatively, 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 Hartzog Road Attainable Housing Community PD is subject to an APF Agreement that recognizes that the project is responsible for a minimum of 7.43 acres of APF lands. In order to satisfy this deficit, the owner will pay a fee in lieu of \$54,342.92 per acre for the 7.43-acre deficit (for a total of \$403,767.90).

The Adequate Public Facilities Agreement for Hartzog Road Attainable Housing Community PD received a recommendation of approval from the Development Review Committee on September 11, 2024, and has been placed on the October 8, 2024, consent agenda to be pulled for consideration with the associated Comprehensive Plan Amendment and PD Land Use Plan. Upon approval and execution by the Board, the Agreement will be recorded in the Public Records of Orange County, Florida.

BUDGET: N/A

APF Agreement BCC Mtg. Date: October 8, 2024
Hartzog Road Attainable Housing Community PD

This instrument prepared by and after
recording return to:

Julie Kendig-Schrader, Esquire
Greenberg Traurig, P.A.
450 S. Orange Avenue, Suite 650
Orlando, FL 32801

Parcel I.D. Nos:
08-24-27-0000-00-010
08-24-27-0000-00-036
08-24-27-0000-00-038
08-24-27-0000-10-000

ADEQUATE PUBLIC FACILITIES AGREEMENT HARTZOG ROAD ATTAINABLE HOUSING COMMUNITY PD

THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR HARTZOG ROAD ATTAINABLE HOUSING COMMUNITY PD (the "Agreement"), effective as of the effective date of the PD LUP as defined herein (the "Effective Date"), is made and entered into by and between WALT DISNEY PARKS AND RESORTS U.S., INC., a Florida corporation, and ARDC-OCALA 201, LLC, a Florida limited liability company, both having a principal address of 1375 Buena Vista Drive, 4th Floor North, Lake Buena Vista, Florida 32830 ("OWNERS") 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" and together with OWNERS, each a "Party" and together, the "Parties").

RECITALS:

A. Owners are the fee simple owners of certain real property located in Orange County, Florida, as generally depicted and described in Exhibit "A" which is attached hereto and made a part hereof by this reference (the "PD Property").

B. The PD Property, also known as Hartzog Road Attainable Housing Community, is requesting to apply the Village (V) FLUM designation and to expand the Horizon West Village H Special Planning Area (SPA) boundary to add the PD Property through a proposed amendment to the Comprehensive Plan Future Land Use Map ("Amendment 2023-3-A-1-1").

C. If Amendment 2023-3-A-1-1 is approved, the PD Property will be included in the Horizon West 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. Amendment 2023-3-A-1-1 contemplates multi-family and conservation land uses within

the PD Property.

E. The Owners have also applied for Planned Development zoning for the PD Property, LUP-23-06-183, to be known as the Hartzog Road Attainable Housing Community PD.

F. The Owners desire to develop the PD Property in accordance with the Hartzog Road Attainable Housing Community Planned Development Land Use Plan ("PD LUP") dated 6/7/2024, submitted by Owners to County, 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 amended.

H. Division 2 of the APF/TDR Ordinance requires, in Section 30-712(b), that Owners 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 APF land requirements cannot be met within a particular PD, or if the development does not contain any APF lands interior to the development, the APF/TDR Ordinance, at Sections 30-712(b) and 30-714(d), states that a fee may be paid to the County equal to the value of the ratio of required APF lands. 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 Amendment 2023-3-A-1-1 and the PD LUP with its consideration of this Agreement.

L. The PD Property contains approximately 56.50 acres of net developable land, and both the Village H SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public facilities acreage for every 7.60 acres of net developable land (the "APF Ratio").

M. When applied to the PD Property, the APF Ratio equals approximately 7.43 acres of public facilities lands.

N. As shown on the Hartzog Road Attainable Housing Community PD Land Use Plan, and as described in this Agreement, Owners are not providing any acreage of adequate public facilities land (the "APF Land") to County, thereby creating an APF deficit of 7.43 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 Village H APF Ratio requires that Owners convey to County approximately 7.43 acres of APF Land. This Agreement provides for conveyance of 0 acre(s) of APF Land, thereby creating a 7.43-acre APF Deficit.

3. APF Fee Amount and Timing of Payment. Owners will pay to County an APF Fee of \$54,342.92 per acre, for 7.43 acres, for a total of Four Hundred Three Thousand Seven Hundred Sixty-Seven and 90/100 Dollars (\$403,767.90), in order to account for the APF Deficit, representing Owners' full and final APF contribution for the PD Property. Application of the APF Fee satisfies the APF Deficit for the PD Property. Owners have agreed that payment of the APF Fee shall occur prior to County's approval of the first platting of the PD Property.

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

5. Limitation of Remedies. County and Owners 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 Owners to perform their 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 PD LUP 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 PD Property as County may lawfully elect.

b) Limitations on Owners' Remedies. Upon any failure by County to perform its obligations under this Agreement, Owners 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 Owners; or
- (iv) any combination of the foregoing.

The 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

OWNERS: Walt Disney Parks and Resorts U.S., Inc.
Team Disney, 4th Floor North
1375 Buena Vista Drive
Lake Buena Vista, Florida 32830
Attention: Jose Morales

With a copy to: Walt Disney World Resort Legal Department
Team Disney, 4th Floor North
1375 Buena Vista Drive
Lake Buena Vista, Florida 32830
Attention: Assistant Chief Counsel, Real Estate

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 Owners.

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 Owners.

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: October 8, 2024

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

By: *Jennifer Lara-Klimetz*
Deputy Clerk

Printed Name: Jennifer Lara-Klimetz

WALT DISNEY PARKS AND RESORTS U.S., INC.,
a Florida corporation

By: [Signature]
Print Name: John McGowan
Title: Director

Date: September 17, 2024

WITNESSES

Witness #1:

Signature: [Signature]
Print Name: LOWELL FLATFOLD
Address: 1375 BUENA VISTA OLIVE
LAKE BUENA VISTA, FL 32830

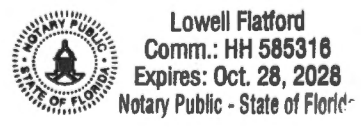
Witness #2:

Signature: [Signature]
Print Name: CAROLYN KINSLER
Address: 1375 BUENA VISTA DRIVE
LAKE BUENA VISTA, FL 32830

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, by JOHN MCGOWAN, as DIRECTOR of WALT DISNEY PARKS AND RESORTS U.S., INC., a Florida corporation, on behalf of said corporation, who is known by me to be the person described herein and who executed the foregoing, this 17th day of SEPTEMBER, 2024. 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 17th day of SEPTEMBER, 2024



[Signature]
Notary Public
Print Name: LOWELL FLATFOLD
My Commission Expires: 10/28/28

ARDC-OCALA 201, LLC,
a Florida limited liability company

By: [Signature]
Print Name: John McGowan
Title: Assistant Secretary

Date: September 17, 2024

WITNESSES

Witness #1:

Signature: [Signature]
Print Name: LOWELL FLATFORD
Address: 1375 BUENA VISTA DRIVE
LAKE BUENA VISTA, FL 32830

Witness #2:

Signature: [Signature]
Print Name: CAROLYN KINSLER
Address: 1375 BUENA VISTA DRIVE
LAKE BUENA VISTA, FL 32830

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, by JOHN MCGOWAN, as ASSISTANT SECRETARY of ARDC-OCALA 201, LLC, a Florida limited liability company, on behalf of said company, who is known by me to be the person described herein and who executed the foregoing, this 17th day of SEPTEMBER, 2024. 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 17th day of SEPTEMBER, 2024.



Lowell Flatford
Comm.: HH 585316
Expires: Oct. 28, 2028
Notary Public - State of Florida

[Signature]

Notary Public
Print Name: LOWELL FLATFORD
My Commission Expires: 10/28/28

Exhibit "A"

The PD Property

APF Agreement
Hartzog Road Attainable Housing Community PD