



Interoffice Memorandum

AGENDA ITEM

March 26, 2018

TO:

Mayor Teresa Jacobs
—AND—
Board of County Commissioners

FROM:

Jon V. Weiss, P.E., Director
Community, Environmental and Development
Services Department

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

SUBJECT:

April 10, 2018 — Consent Item
Hamlin Planned Development / Unified Neighborhood Plan
Adequate Public Facilities Agreement

The Hamlin Planned Development (PD) /Unified Neighborhood Plan was originally approved on March 12, 2013, and is located in the Town Center Special Planning Area of Horizon West. The existing PD contains 600.33 gross acres and consists of 12 development neighborhood parcels, Adequate Public Facility (APF) roadways and parks, and a development program consisting of 1,831 residential dwelling units, 1,848,600 square feet of non-residential uses, and 200 hotel rooms.

Pursuant to Division 2 of the Orange County Code (Section 30-712(b)), an APF Agreement is required in order to identify the acreage needed for adequate public facilities. Typically, an APF Agreement runs concurrently with the creation of a PD, however in this case the Hamlin PD was approved without an APF Agreement in 2013. An APF Agreement is proposed at this time so the owner may sell or assign credits in the future.

The proposed Hamlin APF agreement outlines a requirement for 63.73 acres of APF Lands. The Owner has already conveyed 92.16 acres and credits (roadways and related stormwater easements, an APF Park, and APF Credits for the Town Center High School APF Agreement dated March 22, 2007), creating a 21.43 acre APF surplus. The APF acreage credit may be sold and/or assigned by the owner to other owners within the Town Center who do not have sufficient land within the boundaries of their PDs to satisfy their APF ratio requirement.

The Hamlin APF Agreement received a recommendation of approval from the Development Review Committee on January 24, 2018, and has been placed on the April 10, 2018 Board consent agenda. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County, Florida.

ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for Hamlin PD by and between Hamlin Retail Partners North, LLC; SLF IV / Boyd Horizon West JV, LLC; Hamlin Retail Partners East, LLC; Provision Proton Center at Hamlin, LLC; Lakewalk at Hamlin Phase 2, LLC; Hamlin Retail Partners, LLC; Lakewalk at Hamlin, LLC; and Orange County. District 1

JVW/JS:am
Attachments

BCC Mtg. Date: April 10, 2018

This instrument prepared by and after
recording return to:
JAMES G. WILLARD, ESQ.
SHUTTS & BOWEN LLP
300 S. ORANGE AVENUE, SUITE 1600
ORLANDO, FLORIDA 32801

2	Tax Parcel I.D. No(s):	
	17-23-27-2714-01-000	21-23-27-5460-19-001
4	17-23-27-2714-02-000	21-23-27-0000-00-036
	17-23-27-2714-02-001	21-23-27-0000-00-033
6	21-23-27-0000-00-002	21-23-27-0000-00-004
	21-23-27-0000-00-003	20-23-27-2717-02-000
8	20-23-27-2717-01-000	20-23-27-2717-19-001
	20-23-27-2713-01-000	29-23-27-2716-02-001
10	20-23-27-2713-02-000	29-23-27-2716-01-001
	20-23-27-2713-03-000	
12	20-23-27-2713-04-000	
	29-23-27-2716-04-001	
14	21-23-27-5460-01-000	
	21-23-27-0000-00-039	
16		
18		

**ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR HAMLIN PD**

THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR HAMLIN (the
“**Agreement**”), effective as of the latest date of execution (the “**Effective Date**”), is made and
entered into by and between the following owners of undeveloped parcels within the Hamlin PD
UNP/LUP:

1. Hamlin Retail Partners North, LLC, a Florida limited liability company
2. SLF IV / Boyd Horizon West JV, LLC, a Delaware limited liability company
3. Hamlin Retail Partners East, LLC, a Florida limited liability company
4. Provision Proton Center at Hamlin, LLC, a Florida limited liability company
5. Lakewalk at Hamlin Phase 2, LLC, a Florida limited liability company
6. Hamlin Retail Partners, LLC, a Florida limited liability company
7. Lakewalk at Hamlin, LLC, a Florida limited liability company

whose mailing address is c/o Boyd Development Corporation, 7586 West Sand Lake Road,
Orlando, Florida 32819, collectively hereafter referred to as the (“**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:

2 A. OWNER is the fee simple owner of certain real property located in Orange County,
Florida, as more particularly depicted on Exhibit "A" attached hereto and made a part hereof by
this reference, referred to as the "**Hamlin PD.**"

4
6 B. The Hamlin PD is identified on 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 the Town Center, in Horizon West, as same is described and depicted
8 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**").

10
12 C. The Hamlin PD 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
14 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
16 that was summarized in the Horizon West Study Report issued February 7, 1995.

18 D. The Hamlin PD has relied on the prior approvals of the Horizon West Study and
the Town Center SAP, and on the approvals and studies included in the Town Center SAP.

20
22 E. The Town Center SAP contemplates a mix of uses including commercial, office
and residential uses within the PD Property.

24 F. OWNER desires to develop the PD Property in accordance with the Hamlin PD
LUP/ UNP, submitted by OWNER to COUNTY, and with the PD zoning application on file with
26 COUNTY.

28 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
30 County Code (the "**APF/TDR Ordinance**") adopted by the BCC on May 20, 1997, as amended.

32 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
34 the development and addressing the conveyance to COUNTY of such adequate public facilities
lands prior to or in conjunction with PD approval, unless otherwise addressed in such agreement
36 pursuant to Section 30-714(c).

38 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. The Hamlin PD contains approximately 325.01 acres 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**”).

L. When applied to the Hamlin PD, the APF Ratio requires approximately 63.73 acres of public facilities lands.

M. As shown on the Hamlin PD LUP/UNP, and as described in this Agreement, OWNER is providing 92.16 acres of adequate public facilities land (the “**APF Lands**”) to COUNTY.

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. Dedication of APF Lands by Owner. As set forth in Section 7.0 of the approved Hamlin PD/UNP/LUP as revised March 15, 2017, a total of 92.16 acres of APF roadway, park, and school lands have been previously dedicated to County.

3. APF Surplus. The APF Ratio requires the Owner to convey to County a total of 63.73 acres of APF Lands. As of this date, the Hamlin PD has provided a total of 92.16 acres thereby creating a 21.43 acre APF surplus.

4. APF Surplus. County hereby acknowledges the aforementioned APF surplus results in APF acreage credit equivalent to 21.43 acres of APF Lands, which APF acreage credit may be sold and/or assigned by Owner to other owners within the Town Center who do not have sufficient land within the boundaries of their PDs to satisfy their APF ratio requirements. Such APF acreage credit may only be used within the Town Center.

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

4 6. 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.

8 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:

- 12 (i) action for specific performance; or
- 14 (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
- 16 (iv) any combination of the foregoing.

18 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 Lands or any portion of the Hamlin PD as County may lawfully elect.

20 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:

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

32 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.

36 7. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit and burden of the parties hereto and their respective heirs, successors, and assigns and shall run with title to the 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.

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

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

COUNTY: Orange County, Florida, c/o County Administrator
Post Office Box 1393
Orlando, Florida 32802-1393
Telephone: 407. 836.7370

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

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

OWNER: c/o Boyd Development Corporation
Attn: Scott Boyd
7586 West Sand Lake Road
Orlando, Florida 32819

With copies to: Shutts & Bowen LLP
Attn: James G. Willard

300 South Orange Ave, Suite 1600
Orlando, FL 32806

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

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

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

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

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

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

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

17. Counterparts. This Agreement may be executed in up to eight (8) counterparts, both of which taken together shall constitute one and the same instrument and any party or signatory hereto may execute this Agreement by signing either such counterpart.

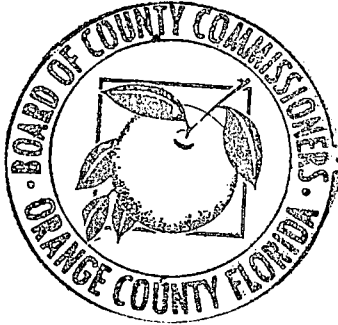
18. Authority to Contract. The execution of this Agreement has been duly authorized
by the appropriate body or official of each party hereto.

19. Termination; Effect of Annexation. This Agreement shall remain in effect so long
as the 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 Property is proposed to
be annexed into a neighboring municipality, County may, in its sole discretion, terminate this
Agreement upon notice to Owner.

20. Termination of AvalonWoods I PD APF Agreement. Owner and County hereby
acknowledge and agree that execution of this Agreement serves to terminate and nullify for all
purposes that certain Adequate Public Facilities Agreement for Avalon Woods I PD previously
approved by County on August 19, 2014, and recorded October 15, 2014, at O.R. Book 10820,
Page 5181, Public Records of Orange County, Florida. It is acknowledged that the land impacted
by the Avalon Woods I PD has now been incorporated into the Hamlin PD and is now subject
solely to the terms of this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

2
4 **IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed
6 by their respective duly authorized representatives on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs,

TJ
Orange County Mayor

Date: 4.10.18

18 **ATTEST:** Phil Diamond, CPA, County Comptroller

20 As Clerk of the Board of County Commissioners

22 By: *Katie Smith*

Deputy Clerk

24 **Katie Smith**

26 Printed Name: _____

HAMLIN RETAIL PARTNERS NORTH, LLC, a Florida
limited liability company

By: BK Hamlin Retail Partners North, LLC, a Florida
limited liability company, its Manager

By: [Signature]
Scott T. Boyd, Manager

Date: 2/16/18

WITNESSES:

[Signature]
Printed Name: Dennis R. Sclafani Sr.
[Signature]
Printed Name: Heather Easterling

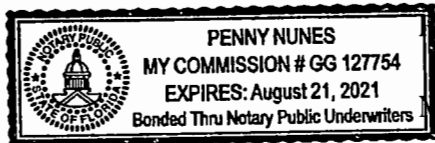
STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Scott T. Boyd as Manager of
BK Hamlin Retail Partners North, LLC, a Florida limited liability company, Manager of Hamlin
Retail Partners North, LLC, a Florida limited liability company, who is known by me to be the
person described herein and who executed the foregoing, this 16th day of February, 2018
S/he is personally known to me or has produced N/A as identification and
did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day
of February, 2018.

[Signature]
Notary Public

Print Name: Penny Nunes



My Commission Expires: _____

SLF IV / BOYD HORIZON WEST JV, LLC, a Delaware
limited liability company

By: Boyd Horizon West, LLC, a Florida limited liability
company, its Managing Member

By: [Signature]
Scott T. Boyd, Manager
Date: 2/16/18

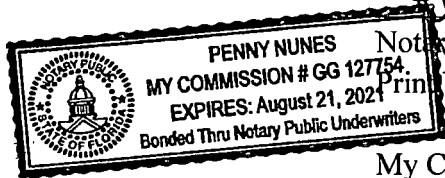
WITNESSES:

[Signature]
Printed Name: Dennis R. Schen Jr.
[Signature]
Printed Name: Heather Easterling

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Scott T. Boyd as Manager of
Boyd Horizon West, LLC, a Florida limited liability company, Managing Member of SLF IV /
Boyd Horizon West JV, LLC, a Delaware limited liability company, who is known by me to be
the person described herein and who executed the foregoing, this 16th day of February
2018. S/he is personally known to me or has produced N/A as identification
and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 16th
day of February, 2018.



[Signature]
Printed Name: Penny Nunes
My Commission Expires: _____

HAMLIN RETAIL PARTNERS EAST, LLC, a Florida
limited liability company

By: BK Hamlin Retail Partners East, LLC, a Florida limited
liability company, its Manager

By: [Signature]
Scott T. Boyd
Manager

Date: 2/16/18

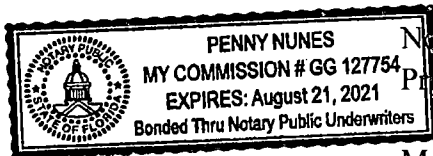
WITNESSES:

[Signature]
Printed Name: Daniel Seligman Sr.
[Signature]
Printed Name: Heather Easterling

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me Scott T. Boyd, Manager of BK Hamlin Retail Partners East, LLC, a Florida limited liability company, Manager of Hamlin Retail Partners East, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 16th day of February, 2018. S/he is personally known to me or has produced 2/18 as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day of February, 2018



[Signature]
Notary Public
Print Name: Penny Nunes
My Commission Expires: _____

PROVISION PROTON CENTER AT HAMLIN, LLC, a
Florida limited liability company

By: [Signature]
Scott T. Boyd
Authorized Manager
Date: 2/16/18

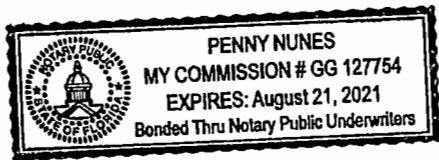
WITNESSES:

[Signature]
Printed Name: James R. Selige Jr.
[Signature]
Printed Name: Heather Easterting

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Scott T. Boyd as Authorized Manager of Provision Proton Center at Hamlin, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 16th day of February, 2018. S/he is personally known to me or has produced N/A as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day of February, 2018



[Signature]
Notary Public
Print Name: Penny Nunes
My Commission Expires: _____

LAKEWALK AT HAMLIN PHASE 2, LLC, a Florida
limited liability company

By: Boyd Lakewalk at Hamlin Phase 2, LLC, a Florida
limited liability company, its Sole Manager

By: [Signature]
Scott T. Boyd
Authorized Manager

Date: 2/16/18

WITNESSES:

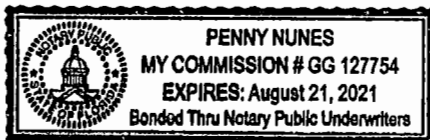
Printed Name: [Signature]

Printed Name: Heather Easterling

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Scott T. Boyd, as Authorized
Manager of Boyd Lakewalk at Hamlin Phase 2, LLC, a Florida limited liability company, Sole
Manager of Lakewalk at Hamlin Phase 2, LLC, a Florida limited liability company, who is known
by me to be the person described herein and who executed the foregoing, this 16th day of
February, 2018. S/he is personally known to me or has produced N/A as
identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day
of February, 2018



Notary Public
Print Name: Penny Nunes
My Commission Expires: _____

HAMLIN RETAIL PARTNERS, LLC, a Florida limited
liability company

By: BK Hamlin Retail Partners, LLC, a Florida limited
liability company, its Manager

By: [Signature]
Scott T. Boyd, Manager

Date: 2/16/18

WITNESSES:

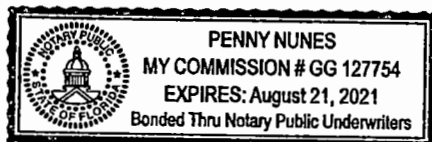
[Signature]
Printed Name: Penny N. Nunes Jr.

[Signature]
Printed Name: Heather Easterling

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Scott T. Boyd as Manager of BK Hamlin Retail Partners, LLC, a Florida limited liability company, Manager of Hamlin Retail Partners, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 16th day of February, 2018. S/he is personally known to me or has produced N/A as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day of February, 2018.



[Signature]
Notary Public
Print Name: Penny Nunes

My Commission Expires: _____

LAKEWALK AT HAMLIN, LLC, a Florida limited liability
company

By: SLF IV / Boyd Hamlin Residential Manager, LLC, a
Delaware limited liability company, its manager

By: SLF IV / Boyd Hamlin Residential JV, LLC,
a Delaware limited liability company, its sole
member

By: Boyd Hamlin Residential, LLC, a
Florida limited liability company, its
managing member

By: [Signature]
Scott T. Boyd, Manager

Date: 2/16/18

WITNESSES:

[Signature]
Printed Name: Dennis B. Seliga Sr.

[Signature]
Printed Name: Kathleen Easterling

STATE OF FLORIDA
COUNTY OF ORANGE

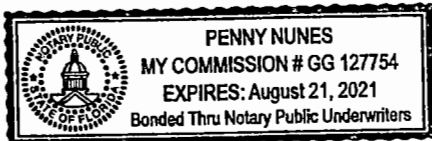
The foregoing instrument was acknowledged before me by Scott T. Boyd, as Manager of
Boyd Hamlin Residential, LLC, a Florida limited liability company, managing member of SLF IV
/ Boyd Hamlin Residential JV, LLC, a Delaware limited liability company, sole member of SLF
IV / Boyd Hamlin Residential Manager, LLC, a Delaware limited liability company, manager of
Lakewalk at Hamlin, LLC, a Florida limited liability company, who is known by me to be the
person described herein and who executed the foregoing, this 16th day of February, 2018.
S/he is personally known to me or has produced N/A as identification and
did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day
of February, 2018 [Signature]

Notary Public

Print Name: Penny Nunes

My Commission Expires: _____



2
8
10
12
14

Exhibit "A"

Project Area Location Map
[1 page follows]

