



## Interoffice Memorandum

## AGENDA ITEM

DATE: February 28, 2019

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

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

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

SUBJECT: March 12, 2019 — Consent Item  
Adequate Public Facilities Agreement  
for Monk Property PD - Case # APF-18-05-136  
(Related to Case # LUP-17-06-213)

The proposed Monk Property Planned Development (PD) contains 49.60 gross acres (25.40 net developable acres) and is generally located west of Duncaster Street, south of Little Lake Sawyer, and north of Overstreet Road. More specifically, the subject property is located within the Lakeside Village Special Planning Area of Horizon West and is designated Estate Home District (EHD) on the Lakeside Village Special Planning Area map. Through rezoning application #LUP-17-06-213, the Monk Property PD proposes a development program of 81 single-family detached residential dwelling units.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West PD is required to convey their proportionate share of Adequate Public Facilities (APF) lands, which are based on the ratio of required APF acres to net developable acres within the Special Planning Area. In the event that APF land requirements cannot be met within a particular PD, an owner may pay a fee to the County equal to the value of the ratio of required APF lands and based upon the average fair market value of land as established by an independent appraiser. For the Lakeside Village Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 6.5.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the Monk Property PD is subject to an APF Agreement that recognizes that the project is accountable for a minimum of 3.90 acres of APF lands. Since the total APF lands conveyed are zero (0) acres, the project carries an APF deficit of 3.90 acres. In order to satisfy this deficit, 3.90 acres of surplus APF acreage has been conveyed from the North of Albert's PD, contingent on the approval of the Monk Property PD.

The Monk Property PD APF Agreement received a recommendation of approval from the Orange County Development Review Committee on August 22, 2018, and has been placed on the March 12, 2019 Board consent agenda to be pulled for consideration with the associated PD Land Use Plan. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County, Florida.

**ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for Monk Property PD by and between Brent I. Monk and Betsy L. Monk, Brent I. Monk, Trustee of the Brent I. Monk Revocable Living Trust dated November 28, 1994, Dolores E. Monk, and Orange County. District 1**

JVW/EPR/stt  
Attachments

BCC Mtg. Date: March 12, 2019

**This instrument prepared by and  
after recording return to:**

James F. Johnston, Esq.  
Shutts & Bowen LLP  
300 S. Orange Avenue, Suite 1600  
Orlando, FL 32801

Tax Parcel I.D. No(s):  
23-23-27-0000-00-007  
23-23-27-0000-00-013  
23-23-27-0000-00-026

**ADEQUATE PUBLIC FACILITIES AGREEMENT  
FOR MONK PROPERTY PD**

**THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR MONK  
PROPERTY PD** (aka Monk PD) (the "Agreement"), effective as of the latest date of execution  
(the "Effective Date"), is made and entered into by and between BRENT I. MONK AND  
BETSY L. MONK, husband and wife, whose mailing address is 13003 Orange Isle Drive,  
Windermere, Florida 34786, BRENT I. MONK, TRUSTEE OF THE BRENT I. MONK  
REVOCABLE LIVING TRUST DATED NOVEMBER 28, 1994, whose address is 13003  
Orange Isle Drive, Windermere, Florida 34786, and DOLORES E. MONK, whose address is c/o  
Celia Henry, 4026 Dorado Drive, Palm Beach Gardens, FL 33418 (collectively, "OWNER"),  
and ORANGE COUNTY, a charter county and political subdivision of the State of Florida  
whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 ("COUNTY").

**RECITALS:**

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

B. The PD Property 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 Lakeside Village, in Horizon West, as same is described and  
depicted in the Lakeside Village Specific Area Plan approved by the Board of County  
Commissioners of Orange County, Florida (the "BCC") on May 20, 1997 (the "Lakeside Village  
SAP").

C. The PD Property is included in the Horizon West Village Land Use Classification  
Area. The BCC adopted the Horizon West Village Land Use Classification Comprehensive  
Policy Plan ("CPP") amendment on June 5, 1995. The Horizon West Village Land Use

Classification was the result of a public-private partnership between the BCC and Horizon West, Inc. The partnership conducted an extensive visioning and community consensus building process that was summarized in the Horizon West Study Report issued February 7, 1995.

D. The Monk PD has relied on the prior approvals of the Horizon West Study and the Lakeside Village SAP, and on the Lakeside Village SAP approvals and studies included in the Lakeside Village SAP.

E. The Lakeside Village SAP contemplates certain residential uses within the PD Property.

F. OWNER desires to develop the PD Property in accordance with the Monk PD LUP, submitted by OWNER 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 OWNER enter into a developer's agreement identifying required adequate public facilities within the development and addressing the conveyance to the COUNTY of such adequate public facilities lands prior to or in conjunction with PD approval, unless otherwise addressed in such agreement pursuant to Section 30-714(c).

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

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

K. It is the intent of the parties that COUNTY will consider approval of the Monk PD with its consideration of this Agreement.

L. The PD Property contains approximately 25.4 acres of **net** developable land, and both the Lakeside Village SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public facilities acreage for every **6.5** acres of net developable land (the “APF Ratio”).

M. When applied to the PD Property, the APF Ratio requires approximately **3.9** acres of public facilities lands.

N. As shown on the PD Land Use Plan for the Monk PD, and as described in this Agreement, OWNER is providing **0** acre(s) of adequate public facilities land (the “APF Land”) to COUNTY, thereby creating an APF deficit of **3.9** 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 Lakeside Village APF Ratio requires that OWNER convey to COUNTY approximately **3.9** acres of APF Lands. This Agreement provides for conveyance of approximately **0** acres of APF Lands, thereby creating a **3.9**-acre APF deficit.

3. APF Acreage Credits. OWNER has obtained **3.9** APF acreage credits within Lakeside Village and has asked COUNTY to apply these credits toward the APF deficit. Confirmation of the credits by County and application of such APF acreage credits will satisfy the APF deficit.

4. 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

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

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

- (i) action for specific performance or injunction; or
- (ii) the right to set off, against the amounts of any impact fees to be credited in favor of OWNER under this Agreement, (A) any amounts due to COUNTY from OWNER under this Agreement but remaining unpaid and (B) the cost to COUNTY of performing any action or actions required to be done under this Agreement by OWNER, but which OWNER has failed or refused to do when required; or
- (iii) the withholding of development permits and other approvals and/or permits in connection with the Project and/or the PD Property; or
- (iv) any combination of the foregoing.

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

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

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

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

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

7. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder nor substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any

extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

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

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

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

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

OWNER: Brent I. Monk and Betsy L. Monk  
13003 Orange Isle Drive  
Windermere, Florida 34786

and

Brent I. Monk, Trustee of the Brent I. Monk Revocable  
Living Trust dated November 28, 1994  
13003 Orange Isle Drive  
Windermere, Florida 34786

and

Dolores E. Monk  
c/o Celia Henry  
4026 Dorado Drive  
Palm Beach Gardens, Florida 33418

With copies to: Shutts & Bowen LLP  
Attn: James F. Johnston, Esq.  
300 S. Orange Avenue, Suite 1600  
Orlando, Florida 32801

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 conveyance of the APF Lands to COUNTY.

14. 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.



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 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.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

APF Agreement, Monk PD  
Brent I. Monk and Betsy L. Monk, husband  
And wife, Brent I. Monk, Trustee, and Dolores  
E. Monk 2019

**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: *Bryan W. Demings*  
for Jerry L. Demings,  
Orange County Mayor

Date: *15 March 2019*

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

By: *Jennifer Lara-Klimek*  
for Deputy Clerk

Printed Name: *Jennifer Lara-Klimek*

APF Agreement, Monk PD  
Brent I. Monk and Betsy L. Monk, husband  
And wife, Brent I. Monk, Trustee, and Dolores  
E. Monk 2019

Brent I. Monk  
BRENT I. MONK

Date: 1/28/19

WITNESSES:

[Signature]  
Print Name: Jim Karr

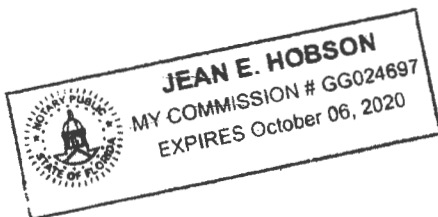
[Signature]  
Print Name: Jean E Hobson

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by BRENT I. MONK, who is known by me to be the person described herein and who executed the foregoing, this 28 day of January, 2019. 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 28 day of January, 2019.

[Signature]  
Notary Public  
Print Name: Jean E Hobson  
My Commission Expires: \_\_\_\_\_



APF Agreement, Monk PD  
Brent I. Monk and Betsy L. Monk, husband  
And wife, Brent I. Monk, Trustee, and Dolores  
E. Monk 2019

Betsy L. Monk  
BETSY L. MONK

Date: 1/28/19

WITNESSES:

[Signature]  
Print Name: Jim Kerr

[Signature]  
Print Name: Jean E Hobson

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by BETSY L. MONK, who is known by me to be the person described herein and who executed the foregoing, this 28 day of January, 2019. She ☒ 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 28 day of January, 2019.

[Signature]  
Notary Public

Print Name: Jean E Hobson

My Commission Expires: \_\_\_\_\_



APF Agreement, Monk PD  
Brent I. Monk and Betsy L. Monk, husband  
And wife, Brent I. Monk, Trustee, and Dolores  
E. Monk 2019

BRENT I. MONK REVOCABLE LIVING TRUST  
DATED NOVEMBER 28, 1994

By: Brent I. Monk Trustee  
Brent I. Monk, Trustee

Date: 1/28/19

WITNESSES:

Tim Karr  
Print Name: Tim Karr

Jean E. Hobson  
Print Name: Jean E. Hobson

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by BRENT I. MONK, TRUSTEE OF THE BRENT I. MONK REVOCABLE LIVING TRUST DATED NOVEMBER 28, 1994, who is known by me to be the person described herein and who executed the foregoing, this 28 day of January, 2019. 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 28 day of January, 2019.



Jean E. Hobson  
Notary Public  
Print Name: Jean E. Hobson  
My Commission Expires: \_\_\_\_\_

APF Agreement, Monk PD  
Brent I. Monk and Betsy L. Monk, husband  
And wife, Brent I. Monk, Trustee, and Dolores  
E. Monk 2019

Brent Monk  
DOLORES E. MONK, BY BRENT MONK, AGENT

Date: 11/28/19

WITNESSES:

[Signature]  
Print Name: Tim Kary

[Signature]  
Print Name: Jean E Hobson

STATE OF FLORIDA  
COUNTY OF ORANGE

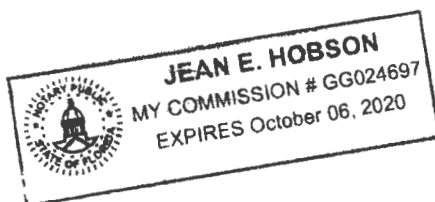
The foregoing instrument was acknowledged before me by DOLORES E. MONK, BY BRENT MONK, AGENT, who is known by me to be the person described herein and who executed the foregoing, this 28 day of January, 2019. He ☒ is personally known to me or ☐ has produced \_\_\_\_\_ as identification and did / did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 28 day of January, 2019.

[Signature]  
Notary Public

Print Name: Jean E Hobson

My Commission Expires: \_\_\_\_\_



**Exhibit "A"**

**Legal Description of  
the PD Property**

The East half of the southeast quarter of Section 23, Township 23 South, Range 27 East, less the part North and West of Creek.

AND LESS:

A portion of the East half of the southeast quarter of Section 23, Township 23 South, Range 27 East, Orange County, Florida. Being more particularly described as follows:

BEGIN at the southeast corner of the southeast quarter of Section 23, Township 23 South, Range 27 East as shown on the plat Windermere Terrace, Plat Book 77, Page 129, Official Records of Orange County, Florida; thence run along the South line of the East half of said southeast quarter, South 89°52'07" West, 1324.72 feet to the southwest corner of the East half of said southeast quarter, also being a point on the northerly boundary line of said Windermere Terrace; thence leaving said South line run along the West line of the East half of said southeast quarter and northerly boundary line of said Windermere Terrace, North 00°09'55" West, 242.26 feet; thence leaving said West line run the following four courses along said northerly boundary line, North 89°51'21" East, 850.53 feet; thence South 06°58'45" East, 200.00 feet; thence North 83°01'15" East, 307.06 feet; thence North 89°31'31" East, 145.38 feet to the East line of said southeast quarter; thence leaving said northerly boundary line run along said East line South 00°14'12" East, 81.32 feet to the POINT OF BEGINNING.

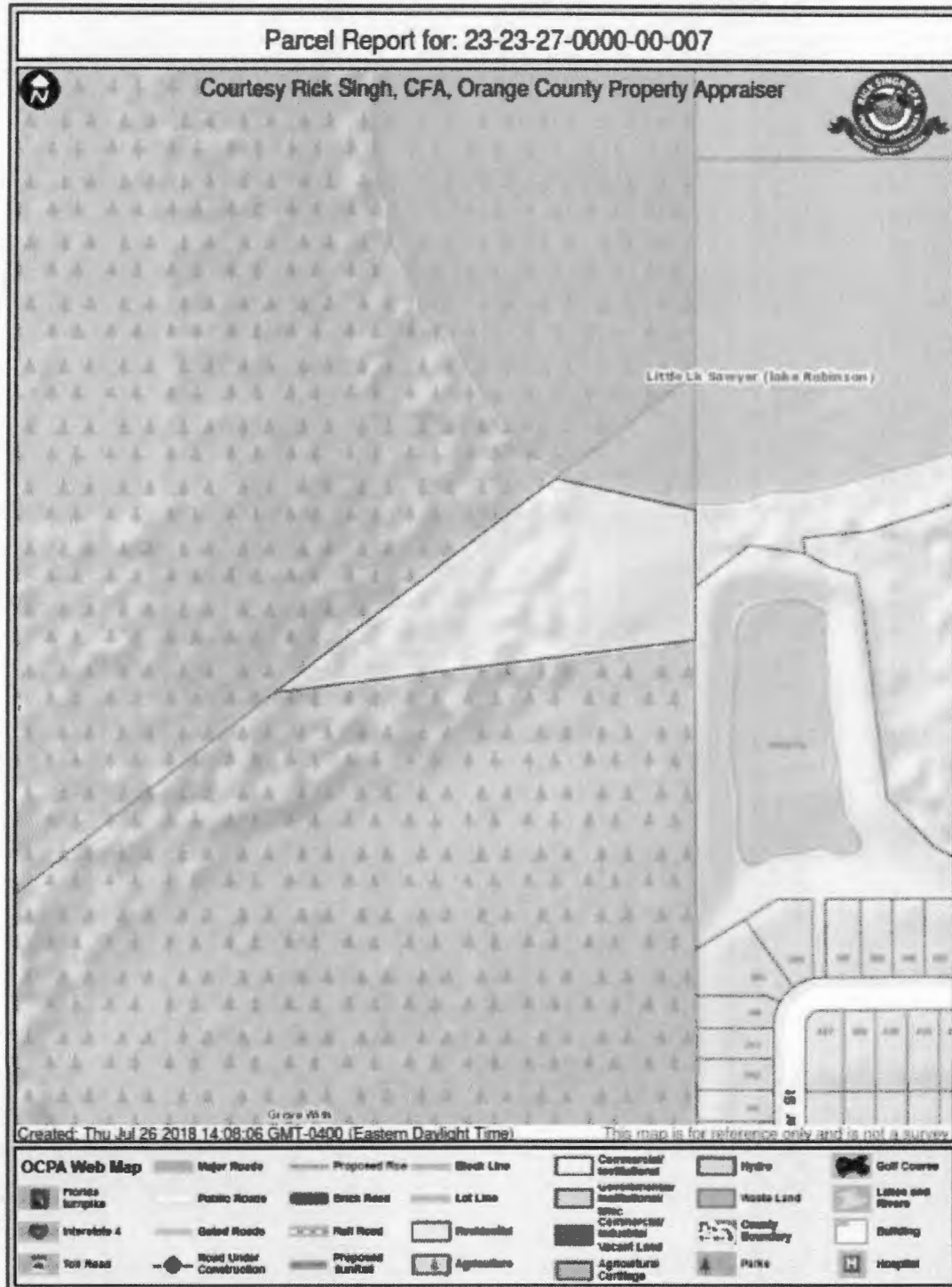
APF Agreement, Monk PD  
Brent I. Monk and Betsy L. Monk, husband  
And wife, Brent I. Monk, Trustee, and Dolores  
E. Monk 2019

**Exhibit "B"**

**Project Area Location Map**  
**[3 pages follow]**



APF Agreement, Monk PD  
 Brent I. Monk and Betsy L. Monk, husband  
 And wife, Brent I. Monk, Trustee, and Dolores  
 E. Monk 2019



APF Agreement, Monk PD  
 Brent I. Monk and Betsy L. Monk, husband  
 And wife, Brent I. Monk, Trustee, and Dolores  
 E. Monk 2019



APF Agreement, Monk PD  
Brent I. Monk and Betsy L. Monk, husband  
And wife, Brent I. Monk, Trustee, and Dolores  
E. Monk 2019

