



Interoffice Memorandum

AGENDA ITEM

August 26, 2021

TO: Mayor Jerry L. Demings
—AND—
County Commissioners

FROM: Jon V. Weiss, P.E., Chairman
Roadway Agreement Committee

SUBJECT: September 28, 2021 – Consent Item
Proportionate Share Agreement for Buena Vista Commons PD Building #4
Winter Garden-Vineland Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Buena Vista Commons PD Building #4 Winter Garden-Vineland Road ("Agreement") by and between Buena Vista Commons, LLC and Orange County for a proportionate share payment in the amount of \$5,725. Pursuant to Section 163.3180(5)(h), Florida Statutes, an applicant may mitigate capacity deficiencies by entering into a proportionate share agreement and contributing a proportionate share payment. The proportionate share payment is due within 90 days of the effective date of this Agreement.

The Agreement follows the recommendation of the Roadway Agreement Committee providing for the mitigation of road impacts for one deficient trip on the road segments of Winter Garden-Vineland Road from Interstate 4 to Apopka-Vineland Road in the amount of \$5,725 per trip.

The Roadway Agreement Committee recommended approval on August 18, 2021. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

If you have any questions, please feel free to contact me at 407-836-5393.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Buena Vista Commons PD Building #4 Winter Garden-Vineland Road by and between Buena Vista Commons, LLC and Orange County for a proportionate share payment in the amount of \$5,725. District 1

JVW/HEGB/fb
Attachment

BCC Mtg. Date: September 28, 2021

This instrument prepared by
and after recording return to:

Mina Atassi
Traffic Planning, & Design, Inc.
535 Versailles Drive
Maitland, Florida 32751

Parcel ID Number: 15-24-28-1080-01-000

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**PROPORTIONATE SHARE AGREEMENT FOR
BUENA VISTA COMMONS PD BUILDING #4**

WINTER GARDEN-VINELAND ROAD

This Proportionate Share Agreement (the “Agreement”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between Buena Vista Commons, LLC, a Florida limited liability company (“**Owner**”), whose principal place of business is 8610 Bow Court, Orlando, Florida 32826, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose address is P.O. Box 1393, Orlando, Florida 32802-1393.

WHEREAS, Owner is the owner of fee simple title to certain real property, as generally depicted on Exhibit “A” and more particularly described on Exhibit “B,” both of which exhibits are attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, the Property is located in County Commission District 1, within the County’s Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Winter Garden-Vineland Road; and

WHEREAS, Owner intends to develop the Property as 13,000 square feet of Professional Office, referred to and known as Buena Vista Commons PD Building #4 (the “**Project**”); and

WHEREAS, Owner received a letter from County dated July 1, 2021, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-21-03-035 for the Project was denied; and

WHEREAS, the Project will generate one (1) deficient PM Peak Hour trip (the “**Excess Trip**”) for the deficient roadway segment on Winter Garden-Vineland Road from Interstate 4 to Apopka-Vineland Road (the “**Deficient Segment**”), and zero (0) PM Peak Hour trips were available on the Deficient Segment on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS, the Excess Trip will cause the Deficient Segment to operate below adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as amended, the Owner shall provide the County with proportionate share mitigation for the Excess Trip; and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trip on the Deficient Segment through the current anticipated Project buildout is five thousand seven hundred twenty-five and 00/100 Dollars (\$5,725.00) (the “**PS Payment**”); and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between them as to the development of the Property into the Project.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between Owner and County, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. PS Payment; CEL.

(a) *Calculation of PS Payment:* The amount of the PS Payment for the Deficient Segment, as described in Exhibit “C,” totals five thousand seven hundred twenty-five and 00/100 Dollars (\$5,725.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trip constitutes the Project’s impact on the aforementioned Deficient Segment based upon (i) Owner’s Traffic Study titled “BUENA VISTA COMMONS, PD-BUILDING #4” prepared by TRAFFIC, PLANNING AND DESIGN dated May, 2021 for BUENA VISTA COMMONS, LLC (the “**Traffic Study**”), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit “C.” The Traffic Study was accepted by the Orange County Transportation Planning Division on June 22, 2021, and is on file and available for inspection with that division (CMS #2021035). Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within Orange County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segment or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. Owner and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(b) *Timing of PS Payment, Issuance of CEL.* Within ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of five thousand seven hundred twenty-five and 00/100 Dollars (\$5,725.00) as the PS Payment. The check shall be made payable to “Orange County Board of County Commissioners” and shall be delivered to the Fiscal

and Operational Support Division of the Planning, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, if the Property's future land use designation and zoning are consistent with the Project's proposed development, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segments. Within the time frame provided in the CEL, the Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within ninety (90) days of the Effective Date, one extension of ninety (90) days may be granted by the manager of County's Transportation Planning Division. In the event Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in subparagraph 2(b) above.

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segment or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* County hereby acknowledges and agrees that upon Owner's payment of the PS Payment as required herein, and absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County's jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient Segment are actually constructed. Provided, however, Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner's Capacity Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws, regulations, and/or Orange County Code provisions or from making the required payment of transportation impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

Section 3. Transportation Impact Fee Credits. County and Owner agree that Owner shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an amount up to but not exceeding the PS Payment in accordance with Section 163.3180, Florida Statutes,

and as specifically described in Exhibit "C." County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees.

Section 4. No Refund. The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable.

Section 5. Notice. With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and 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 other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: Karam Duggal
Buena Vista Commons, LLC
8610 Bow Court
Orlando, Florida 32836

With copy to: Nadine Abu-Jubara
Traffic, Planning, and Design, LLC
535 Versailles Drive
Maitland, Florida 32751

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

With copy to: Orange County
Planning, Environmental, and Development Services
Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Orange County
Planning, Environmental, and Development Services
Department
Manager, Transportation Planning Division
4200 South John Young Parkway, 2nd Floor
Orlando, Florida 32839

Orange County
Planning, Environmental, and Development Services
Department
Manager, Planning Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Section 6. Covenants Running with the Property. This Agreement shall be binding and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

Section 7. Recordation of Agreement. The parties hereto agree that this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

Section 8. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

Section 9. Specific Performance. County and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

Section 10. Attorney Fees. In the event either party hereto brings an action or proceeding including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney and legal fees.

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any words contained

therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or 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.

Section 12. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

Section 13. Counterparts. This Agreement may be executed in up to three (3) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

Proportionate Share Agreement, BUENA VISTA COMMONS PD BUILDING #4
Buena Vista Commons, LLC for Winter Garden-Vineland Road, 2021

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.



“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*

for Jerry L. Demings
Orange County Mayor

Date: September 28, 2021

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

By: *Katie Smith*

Deputy Clerk

Print Name: **Katie Smith**

WITNESSES:

[Signature]
Print Name: E.D. Higgins
[Signature]
Print Name: Mina Yousef

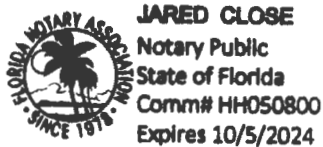
"OWNER"

Buena Vista Commons, LLC a Florida limited liability company
By: [Signature]
Print Name: Karam Duggal
Title: Manager
Date: 7/29/2021

**STATE OF FLORIDA
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29 day of July, 2021, by Karam Duggal, as manager of Buena Vista Commons LLC, a Florida Limited Liability Company, on behalf of such corporation, who ☐ is personally known to me or ☒ has produced as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 29 day of July, 2021.



[Signature]
NOTARY PUBLIC
Print Name: Jared Close
My Commission Expires: 10/5/2024

Exhibit A

“BUENA VISTA COMMONS PD BUILDING #4”

Project Location Map

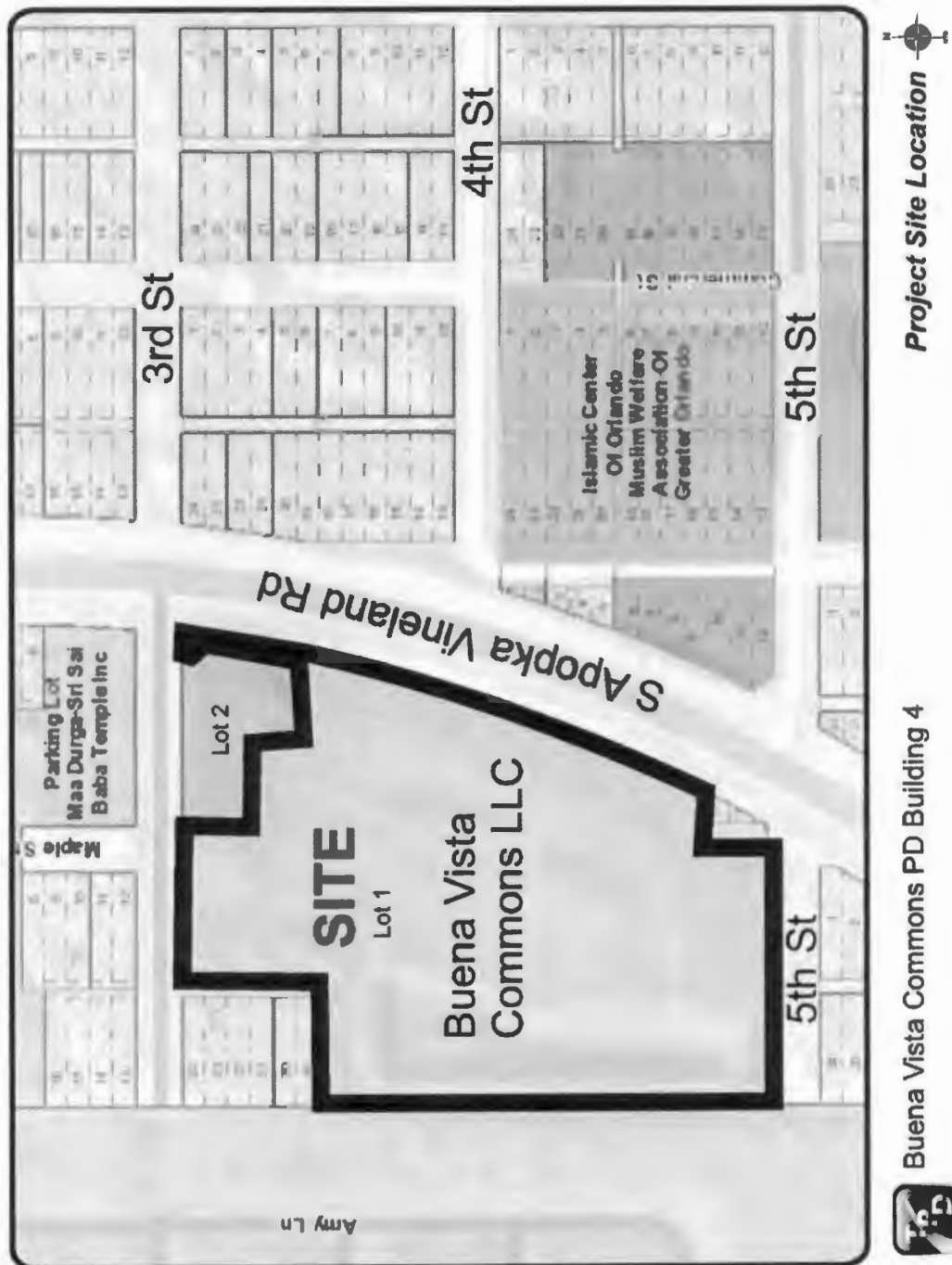


Exhibit "B"

"BUENA VISTA COMMONS PD BUILDING #4"

Parcel ID: 15-24-28-1080-01-000

Legal Description:

Lots 1 and 2, BUENA VISTA COMMONS PD, according to the map or plat thereof as recorded in Plat Book 78, Page 50, Public Records of Orange County, Florida.

LESS AND EXCEPT:

THAT PORTION OF LOT 2, BUENA VISTA COMMONS PD, AS RECORDED IN PLAT BOOK 78, PAGE 50 PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

DESCRIBED AS FOLLOWS:

A PORTION OF ORANGE CENTER, AS RECORDED IN PLAT BOOK D, PAGE 143, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 24 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; RUN THENCE S89°43'49"E ALONG THE NORTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 15 A DISTANCE OF 938.24 FEET TO A POINT ON THE WEST LINE OF SAID BLOCK 58; THENCE N00°02'123"W ALONG THE WEST LINE OF BLOCKS 58 AND 65 A DISTANCE OF 314.62 FEET TO THE NORTHWEST CORNER OF LOT 18, BLOCK 65 OF SAID PLAT OF ORANGE CENTER; THENCE S89°57'39"E ALONG THE NORTH LINE OF LOT 18, BLOCK 65 OF SAID PLAT OF ORANGE CENTER AND ITS EASTERLY EXTENSION A DISTANCE OF 136.00 FEET TO THE NORTHWEST CORNER OF LOT 7, BLOCK 65 OF SAID PLAT OF ORANGE CENTER; THENCE N00°02'123"W A DISTANCE OF 150.00 FEET TO THE NORTHWEST CORNER OF LOT 1, BLOCK 65 OF SAID PLAT OF ORANGE CENTER AND THE SOUTH RIGHT-OF-WAY LINE OF THIRD STREET; THENCE S89°57'139"E ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 169.39 FEET FOR A POINT OF BEGINNING; THENCE CONTINUE S89°57'39"E ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 210.08 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF APOKA-VINELAND ROAD AND A POINT ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 1667.89 FEET, A CHORD BEARING OF S08°35'25"W, A CHORD DISTANCE OF 131.15 FEET, RUN THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 04°30'23", A DISTANCE OF 131.18 FEET; THENCE N89°57'39"W A DISTANCE OF 95.60 FEET; THENCE N00°16'158"W A DISTANCE OF 55.19 FEET; THENCE N89°57'39"W A DISTANCE OF 94.56 FEET; THENCE N00°02'123"E A DISTANCE OF 74.50 FEET TO THE POINT OF BEGINNING.

Exhibit "C"

"BUENA VISTA COMMONS PD BUILDING #4"

DEFICIENT SEGMENT

Log of Project Contributions
Winter Garden Vineland Rd from (I4 to Apopka Vineland Rd)

Roadway Improvement Project Information

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Winter Garden Vineland Rd	M	Apopka Vineland Rd	0.51	E	3020	Adding 2 lanes	4040	1020	\$5,838,799	\$5,725

County Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Winter Garden Vineland Rd	M	Apopka Vineland Rd	0.51	E	3020	335	4040	1020	\$1,917,845

Developer Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Winter Garden Vineland Rd	M	Apopka Vineland Rd	0.51	E	3020	4040	1020	335	685	\$3,921,154	\$5,725

Updated: 6/22/21

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Apr-21	Existing plus Committed	326	\$1,586,350
	Apr-21	Lake Buena Vista Hotel	9	\$51,525
		Backlogged Totals:	335	\$1,917,875
Proposed	Jun-21	Buena Vista Commons PD Building 4	1	\$5,725
				\$0
				\$0
				\$0
				\$0
		Totals:	336	\$1,923,600