


United States Nuclear Regulatory Commission Official Hearing Exhibit	
In the Matter of: Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2)	
	ASLBP #: 09-879-04-COL-BD01
	Docket #: 05200029   05200030
	Exhibit #: INT434-00-BD01
	Admitted: 12/3/2012
	Rejected:
Other:	Identified: 10/31/2012 Withdrawn: Stricken:

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LEVY COUNTY DEVELOPMENT DEPARTMENT

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Date: December 7<sup>th</sup>, 2011  
To: Levy County Planning Commission and Board of County Commissioners  
From: Robert Corbitt, Dev. Dept. Dir. *R. Corbitt* 3/12/12  
Re: Staff Report - Special Exception No. SE 1-12 for a Major Mining Operation

Project Name: Knight Farm Sand Mine  
Applicant: Eng, Denman & Associates  
2404 NW 43<sup>rd</sup> Street  
Gainesville, Florida 32606  
Property Owner: C&M Ranch West Levy -180 LLC & 200 LLC  
19490 SE 127<sup>th</sup> Terrace  
Dunnellon, Florida 34431  
Short Legal Description: Portions of Sections 6 & 7, both lying within Township 16 So; Range 17 East, Levy County, Florida.  
Parcel ID Numbers: 03841-000-00 & 03846-000-00  
Total Project Area: 380 Acres more or less.  
Designated Land Use and Zoning District: Forestry/Rural Residential - F/RR  
Current Land Use & Development: Agricultural - Pasture Land - 2 Irrigation Wells

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Project Description Based on Submitted Application:

The application is a request to mine sand to be used for building construction on a total parcel of

approximately 380 acres. Approximately 242 acres of the project site will be disturbed by construction.

The application is also a request to allow clean fill to be brought back to the site as part of the reclamation plan. The applicant states that farming operations will resume after reclamation is completed. The site plan indicates the farming operations planned after reclamation is the planting of Coastal Bermuda grass over a 24 inch cap of natural soil.

Clean fill, as defined by FDEP, is any solid waste which is virtually inert, which is not a pollution threat to ground or surface waters, is not a fire hazard, and is likely to retain it's physical and chemical structure under expected conditions of disposal and use. This term includes brick, block, glass, rock, clay, ceramics and uncontaminated concrete, including embedded pipe or steel.

The southern boundary of the project area is located approximately 1/2 mile north of the northern boundary of the proposed nuclear power plant property (Levy Nuclear I & II), on the same side of US 19/98 (east side).

It is bordered on the northern boundary by a subdivision (Woodpecker Ridge) which includes paved streets, and is approximately 67% built-out (61 homes, 1 church, 93 lots). It is bordered on the west by "King Property," a recorded-unrecorded subdivision, as recorded in Unrecorded Plat Book 1, Page 4. Please also note that a portion of King Property was subdivided into one acre lots known as Blue Bird Hill (no plat), which also abuts the mine site on it's western boundary. East of the mine site property, with the exception of Cedars of Lebanon Cemetery, lies the Goethe State Forest.

The applicant proposes to use an existing county maintained limerock roadway (SE 147<sup>th</sup> Place) that traverses through said recorded-unrecorded subdivision for access. The roadway is located between lots 4 and 5, King Property, and is the sole access to the Cedars of Lebanon Cemetery lying adjacent to the eastern boundary of the mine project site. The site plan provided with the application shows a 100 foot setback buffer to the boundary of the Cedars of Lebanon Cemetery, and a 50 foot setback to either side of SE 147<sup>th</sup> Place.

The applicant is proposing to provide a surface course of asphaltic cement on SE 147<sup>th</sup> Place from US 19/98 to the western boundary of the mine site, not to the cemetery property. Staff will provide recommendations regarding the improvements needed to bring the SE 147<sup>th</sup> Place up to an acceptable standard that would support the anticipated truck traffic.

The site plan shows a staging area near the western boundary of the mine site approximately 135 feet into the project area, and approximately 50 feet north of the northern road right-of-way of SE 147<sup>th</sup> Street. A temporary office trailer is shown to be in the southeastern corner of the staging area. No dimensions are provide for the staging area, or the temporary office building. However, staff finds the staging area scales to approximately 135 feet by 175 feet, and the office trailer scales to 40 feet by 60 feet.



There are several areas within the project area that have been designated wetlands. The plans indicate that a 100 foot buffer will be maintained around each such wetland areas.

There is a high pressure natural gas pipeline traversing a portion of the mine site. The site plan provides for a 50 foot setback from the 40 foot Florida Gas Transmission pipeline easement.

Progress Energy Florida maintains a 100 foot electric transmission line easement along the western boundary of the mine site, traversing King Property, Blue Bird Hill and Woodpecker Ridge.

The following is a section by section review of the application (SE 1-12). Staff comments will appear in text boxes after each applicable code section.

**Sec. 50-719. Mining and excavation of minerals, resources, or natural resources, and site reclamation.**

**I. Special exception approval and excavation and fill permits required; vesting; exceptions.**

(a) **Special exception and excavation and fill permit.** Mining activities or mining operations are divided into two categories: (a) major mining, excavation and fill activities or operations (also referred to as major mining operations), and (b) minor excavation and fill activities or operations. Major mining operations shall require the approval of a special exception application in accordance with the provisions of this section and all applicable sections in division 5, article XIII, of this chapter 50, prior to commencement of any such operations. Major mining operations and minor excavation and fill activities or operations shall also require the issuance of an excavation and fill permit in accordance with the provisions of this section prior to commencement of any such activities or operations.

This is a major mining operation requiring both a special exception use permit and an excavation and fill permit.

(b) **Vested or approved existing mining operations.** A mining operation shall be considered a vested or approved existing mining operation and shall not be required to obtain a special exception approval or an excavation and fill permit prior to commencement of or continuing operations, provided that such mining operation meets the definition of an active mine, it has previously obtained county approval via the special exception process, and documents are provided showing that all required state permits were obtained and maintained in a valid status after county approval of the special exception, or if no state permits or approvals were required at the time of county approval of the special exception, documents are provided showing written affirmation of the permit exemption

from the Florida Department of Environmental Protection or the applicable Water Management District of the State of Florida, and any other applicable permitting agency. Any vested or approved existing mining operation shall be limited to:

- (1) The parcel identified in the aforementioned special exception, permit or exemption letter;
- (2) The property that was approved by the previous special exception review process is in compliance with the approved site plan and conditions of the special exception, if any; and
- (3) No expansion of any major mining operation shall be permitted without first obtaining special exception approval and issuance of an excavation and fill permit in accordance with the provisions of this section.

**(c) Exemptions.** Any exemption contained herein shall not exempt any activity from any requirements to obtain all necessary state or federal permits or approvals for such activity and shall not exempt any such excavation or fill activity from meeting the hauling requirements contained in subsection III.(c)(1) hereof. The following activities shall not require a special exception approval or excavation and fill permit prior to commencement or continuance of such activity:

- (1) Incidental excavation conducted pursuant to a valid building permit issued by the Levy County Building Department or other valid development order approved and issued by the applicable county department or county board or commission;
- (2) Construction of state, federal, or local public works within the limits of public property;
- (3) Bonafide agriculture, silviculture, plant and tree nursery operations when the fill and/or excavation activities are incidental to typical industry operations;
- (4) Earth moving in conjunction with the installation of a utility, wherein the excavation is to be backfilled;
- (5) Earth moving pursuant to a valid permit issued by the applicable Water Management District of the State of Florida for construction site preparation and development of storm water management systems;
- (6) Excavation and fill placed pursuant to a valid permit issued by the State of Florida Department of Health after a development approval has been issued by the Levy County Development or Building Department;
- (7) Emergency activities necessary to protect lives and property; or



- (8) Graves in approved cemeteries.

This is not vested or exempt mining operation.

**II. Special exceptions for major mining operations; criteria, standards and conditions.**

(a) **Special exception approval required.** Major mining operations not otherwise vested or excepted herein shall require the approval of a special exception application in accordance with the provisions of this section and all applicable sections in division 5, article XIII, of this chapter 50, prior to commencement of such operations. Any major mining operations shall also require the issuance of an excavation and fill permit prior to the commencement of such operations. Some of the major mining operations that will require a special exception approval include, but will not be limited to the following list, which is provided by way of illustration and not limitation:

- (1) Mining or excavation activities or operations;
- (2) Borrow pits and similar activities;
- (3) Mineral, resource, or natural resource extraction;
- (4) Quarries and processing sites;
- (5) Fill operations, including storage or stock piling of minerals, resources, natural resources or materials.

This is a major mining operation (borrow pit) requiring both a special exception use permit and excavation and fill permit.

(b) **Exemptions from special exception requirement but not excavation and fill permit requirement.** The activities listed in this subsection II.(b) shall be exempt from the requirement for a special exception approval pursuant to this section prior to commencement or continuance of such activity. The listed activities will not be exempt from the requirement for issuance of an excavation and fill permit prior to commencement or continuance of such activity. The activities which are exempt from the special exception requirement but not the excavation and fill permit requirement are as follows:

- (1) Land alteration and excavation activities that:
  - a. Do not exceed 1,000 cubic yards of fill removed from or placed on a tract or parcel of 20 acres or less; or do not exceed 10,000 cubic yards of fill removed from or placed on a tract or parcel

greater than 20 acres;

b. Do not impede or divert the flow of surface water entering or leaving the parcel in a manner that adversely impacts offsite property;

c. Do not occur in environmentally sensitive lands such as but not limited to: wetlands, estuaries, streamside management zones, riverine areas, coastal high hazard areas or pristine habitat; and

d. Constitute site preparation for future construction projects or a re-grading of a lot or parcel of land to accomplish a suitable topography for construction or aesthetic purposes, provided that the proposed finished grade will be compatible with the adjacent properties, with pre-existing drainage patterns, and shall not cause offsite impacts of storm water run-off.

(2) Excavation resulting from the creation of a pond:

a. Not to exceed one-half acre in size, or 35 percent of the area of a lot or parcel, whichever is more restrictive, on a single family parcel of less than ten acres; or

b. Not to exceed one acre in size on a single family, agricultural or forestry parcel not less than ten acres.

This is not an exempted activity.
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(c) **Minimum criteria, standards and conditions.** When reviewing an application for special exception for a major mining operation, the planning commission shall not recommend approval of such application unless the application meets all of the applicable criteria, standards, conditions and requirements contained in all applicable sections in division 5, article XIII, of this chapter 50, and in this section. The board of county commissioners may grant a special exception application for a major mining operation, provided that such application complies with all applicable provisions and requirements of division 5, article XIII, of this chapter 50, and all applicable provisions of this section. A finding by the board of county commissioners that any of the criteria, standards, conditions or requirements in this section have not been adequately addressed to protect area residents, businesses and the health, safety and welfare of the community as a whole shall result in the denial of an application for a special exception for a major mining operation. In addition to any criteria, standards, conditions, and requirements contained in elsewhere in this division 5 of article XIII of this chapter 50, an application for a special exception for a major mining operation shall meet the following criteria, standards, conditions, and requirements:

(1) The proposed mining operation complies with all the required regulations and standards of this chapter, including provisions of division 5 and of this section specifically, and all other applicable regulations.



The following staff report will point out any deficiencies or inconsistencies with the applicable regulations.

- (2) The proposed mining operation is serviced by roads of adequate capacity to accommodate the traffic volume and load impacts and not adversely impact surrounding uses; or the applicant enters into an agreement with the county to make the necessary improvements to the impacted roads.

It is staff's opinion that the proposed access to the proposed mining operation does not meet the standards contained in Section 50-719. However, staff will provide recommendations related to roadway improvements necessary to accommodate the traffic volume and load impacts to SE 147th Place.

- (3) Screening and buffering for the proposed mining operation, where necessary, is of such type, dimension and character to improve compatibility of the proposed mining operation with uses and structures of adjacent and nearby properties.

The applicant has provided a site plan that includes screening and buffering. Ultimately, the board of county commissioners shall decide the adequacy of the proposed screening and buffering.

- (4) The proposed mining operation is consistent with the comprehensive plan and conforms with the general plans of the county as embodied in the comprehensive plan.

Development Department staff finds the application to be consistent with the comprehensive plan and conforms with the general plans of the county as embodied in the comprehensive plan. The planning director may provide additional comments regarding consistency with the comprehensive land use plan.

- (5) The proposed mining operation will not adversely impact springs, rivers, tributaries, or water quality. The director of the county development department or the board of county commissioners may require that a licensed professional geologist, registered with the State of Florida, make this determination by using existing or new geological, hydro-geological, water quality or any other pertinent data. If required by the director of the county development department, the applicant shall supply the determination prior to the hearing on the application with the planning commission. If required by the board of county commissioners, the applicant shall supply the determination when directed by the board.

Staff finds that the proposed mining operation should not adversely impact springs, rivers or their tributaries. The project will require an environmental resource permit from the Southwest Florida Water Management District. The plan is to leave a minimum of two feet of natural earth between the bottom of the borrow pits and the seasonal high water elevation to help assure water quality. The plans indicate that 45 boring samples were taken to determine the elevation of the seasonal high water line and to determine the depth of the resource sought.

(6) The proposed mining operation will not result in such noise, odor, dust, vibration, off-site glare, substantial traffic or degradation of road infrastructure so as to adversely impact surrounding development or cause hazardous traffic conditions.

Staff finds that the mining and reclamation operations would result in substantial traffic, but should not cause hazardous traffic conditions.

Staff has concerns regarding off-site impacts to surrounding residential development (residential subdivisions), including substantial disturbance to persons attending funeral functions.

(7) The proposed mining operation will not adversely impact the recreational enjoyment of state, federal or county parks by the public.

Staff finds the proposed mining operation should not adversely impact the recreational enjoyment of state, federal or county parks by the public.

(8) The proposed mining operation will not cause an adverse environmental impact to dumpsites, landfills or effluent ponds, or public water supply wellhead, as shown by an environmental impact study prepared by a firm or individual qualified by experience and any necessary licensing to prepare such study, which study shall be submitted by the applicant with the application. Such study may be included as part of a mining impact assessment report submitted by the applicant.

Staff finds that the proposed borrow operation should not cause an adverse environmental impact to dumpsites, landfills or effluent ponds, or public water supply wellhead as none of these features are in close proximity.

(9) The proposed mining operation is not located in a prohibited area, and meets all requirements regarding buffering, access, application, impact assessment report, documentation, setback, slope, and reclamation requirements, and any other requirements, all as contained in this section.



Staff finds that the proposed mining operation is not located in a prohibited area.

However, staff finds that the proposed mining operation does not meet all requirements regarding access or the setbacks to public roadways. These deficiencies will be pointed out later in this staff report as the review reaches the applicable code sections.

(10) The proposed mining operation has obtained all other federal, state or local permits.

The application does not include all state permits. The application does not include the SWFWMD permit. The application only contains a notice of a complete application to that agency.

(11) The proposed mining operation will not be detrimental to the area residents or businesses, or the public health, safety or welfare of the community as a whole.

This requirement will be decided through the special exception review process, ultimately decided by the board of county commissioners, upon a recommendation by the planning commission.

Staff has concerns regarding the compatibility of the mining operations with the existing cemetery and the residential development adjacent to, and near the mine site.

**(d) Specific criteria, standards, conditions and requirements for special exceptions for major mining operations.** In order to meet the criteria, standards, conditions, and requirements for approval of an application for a major mining operations special exception, in addition to the minimum criteria, standards, and conditions provided above, the following provisions shall apply:

**(1) Prohibited areas for major mining operations.** The following are areas where major mining operations shall be prohibited:

a. Within a 500-foot radius of abandoned dumpsites, landfills or effluent ponds as identified by the Florida Department of Environmental Protection. When blasting is used, this radius shall be increased to 1,000-foot radius.

b. Within a 1,000-foot radius of a public water supply wellhead of 100,000 gallons per day or greater providing blasting is not used as a method of extraction.

c. Within a one mile radius of a public water supply wellhead of 100,000 gallons per day or greater when blasting is used as a method of extraction.

d. Within two miles of the Manatee Springs or Fanning Springs State Park boundaries.

e. Within a one mile corridor (one-half mile on each side) of known streams, conduits,

lineaments, fractures, or matrix flow paths with the potential to impact Manatee Springs or Fanning Springs which may directly or indirectly result in the occurrence of one or more of the following:

i) The deterioration of water quality of adjacent private or public water supply wells, or reduction of their water level.

ii) The deterioration of water quality or flow of Manatee Springs or Fanning Springs. The director of the county development department or the board of county commissioners may require any applicant to provide documented scientific evidence that i) and ii) above shall not occur, as referenced in subsection II.(c)(5) of this section.

f. Within one-quarter mile of schools, hospitals, county, state or federal parks; or within 660 feet if buffering methods are approved by the board of county commissioners in accordance with the buffering standards in subsection II.(d)(2) below.

g. Within one-quarter mile of a platted and recorded subdivision with lot sizes of five acres or less that include constructed streets and developed parcels; or within 660 feet if buffering methods are approved by the board of county commissioners in accordance with the buffering standards in subsection II.(d)(2) below.

Staff finds that the proposed major mining operation is not located within a prohibited area.

Staff finds that the site plan submitted with the application meets the setback standards for platted and recorded subdivisions (Blue Bird Hill is not a platted and recorded subdivision).

However, staff will recommend the planning commission and board to require a 10 foot berm in order to obtain 80% opacity from the Bluebird Hill and Woodpecker Ridge subdivisions.

(2) **Buffering standards.** When required by the board of county commissioners for any major mining operation, the following buffer standards shall apply:

a. **Length.** The buffer shall be of sufficient length so as to shield mining activity from incompatible land uses.

b. **Depth.** A minimum of 100 feet measured perpendicularly from the property line.

c. **Opacity.** Where required, the buffer shall shield adjoining properties when viewed from the property line. The buffer must shield the operation at the time excavation begins. Shielding shall meet an 80 percent opacity standard. Berms, towers, stockpiles, and other similar items that extend above



the buffer need not be shielded. The clearing and stripping of vegetation from the property where a major mining operations special exception approval has been obtained shall not require the pre-establishment of a buffer.

**d. Makeup.** The buffer shall consist of a vegetated screen, augmented by a berm if required to obtain opacity. The following conditions apply to the vegetated screening:

i) A 100-foot vegetative screen is standard, except where a berm is necessary. Where a berm is necessary, the outer 50 feet of the buffer must consist of the vegetative screen;

ii) Existing trees located within the vegetative screen area must remain.

iii) If sufficient vegetation does not exist, the vegetative screen area shall be planted primarily with evergreen or other non-deciduous trees native to the area and compatible with the area soils.

**e. Berms.** The following are requirements for berms where utilized to augment vegetative buffers:

i) The berm shall generally run parallel to, and no closer than 50 feet from the property line. The above two standards may be modified where there are impeding physical features, such as wetlands or other such features.

ii) The berm shall be built to the height necessary (not to exceed ten feet above the natural surface of the ground) to shield mining activity from the property line (excluding booms, towers, stockpiles or other similar items which extend above the buffer) so that it cannot be viewed through the buffer from adjoining properties when viewed from the property line. The berm shall not be of uniform height for its length, but shall undulate at varying heights at or below the ten-foot maximum set herein, while still providing the shielding from view of adjoining properties from the property line.

iii) The berm must be stabilized with the planting of vegetation. Sloping requirements to the exterior face of the berm shall not exceed 1:1, vertical to horizontal.

iv) Adequate control shall be provided to protect the adjacent properties from additional runoff caused by the earthen berm.

The proposed berms appear to meet these standards.
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**(3) Access requirements.** All major mining operations shall comply with the following access requirements:

a. A mining and excavation operation shall be located only within an area which has direct access to a major collector or arterial road.

The proposed mining operation does not comply with this section, as it does not have direct access to US 19/98. The access is through King Property, a recorded-unrecorded subdivision.

- b. Ingress and egress must have direct access to a paved county or state maintained road. Where access is to a paved county road, the minimum road classification shall be a major collector.

The proposed access does not comply with this section. The roadway (SE 147<sup>th</sup> Place) is not paved, not classified as a major collector, and does not provide direct access to US 19/98.

- c. Access and truck routes to the site through platted recorded and unrecorded residential subdivisions are prohibited. This requirement shall not apply if the excavation activity is being performed as part of the development of the applicable subdivision.

The access to this major mining operation is through a platted recorded-unrecorded residential subdivision and is therefore a violation this section of the Land Development Code, raises serious compatibility concerns, and may very well cause substantial injury to the property value of the two lots in King Property subdivision, adjacent to the roadway (SE 147<sup>th</sup> Place).

- d. **Hauling requirements.** The applicant shall ensure that neither public nor private property will be damaged by the hauling of material, and that hazardous traffic conditions will not be created, as shown by a traffic study prepared by a traffic engineer licensed in the State of Florida, which study shall be submitted by the applicant with the application. Such study may be included as part of a mining impact assessment report submitted by the applicant. All such applications for a special exception shall identify proposed hauling routes. Where the hauling of excavated materials use public roads, such vehicles shall be covered in a manner to prevent fill spillage, consistent with the Florida Department of Highway Safety and Motor Vehicles standards. All hauling vehicles shall have the trucking company name (or truck owner's name if privately owned) prominently displayed on the sides of the vehicle.

The application complies with this section with the exception of traversing through King Property, a recorded- unrecorded subdivision.

- (4) **Setback requirements.** All major mining operations shall meet the following setback requirements:

- a. No excavation shall be within 100 feet of any road right-of-way boundary.

The site plan submitted with the application violates this section. Only a 50 foot setback has been provided along SE 147<sup>th</sup> Place.



b. No excavation of earth, minerals or resources shall be closer than 50 feet to an adjoining undeveloped lot or parcel and 100 feet from any residentially developed lot or parcel boundary, regardless of the location of the residence on the lot or parcel.

(5) **Slope requirements.** All major mining operations shall meet the following slope requirements: Sides of reclaimed limestone, shell and dolomite mines shall provide a shore line slope consistent with the latest regulations of the department of environmental protection bureau of mine reclamation. Dormant sand, clay or dirt borrow pits shall be left with side slopes not steeper than one-foot rise for each three-foot horizontal measurement, or the slope requirement provision of the state agency issuing the environmental resource permit.

The construction plans comply with this section. The slope for excavated areas is shown to be one foot rise for each 4 feet horizontal measurement.

(6) **Reclamation plan.** Any application for a special exception for a proposed major mining operation for limestone, shell, dolomite mines, sand, clay, or dirt shall provide, as a part of the application, a letter of confirmation from the Florida Department of Environmental Protection that a reclamation plan or notice has been reviewed and found sufficient, or that the mine will be exempt from the requirements to provide a plan or notice.

A "Mining Notice" has been provided to FDEP for review, and that agency has found the notice to be in compliance with Chapter 62C-39.008.

(7) **Mining impact assessment report.** All applications for proposed major mining operations that will include blasting or the processing of raw material shall present a mining impact assessment report prepared by a professional environmental consulting, planning or engineering firm addressing subsections a. through d. below. The assessment report shall identify impacts to reflect all individual and cumulative impacts resulting from phasing of the proposed mining operations or activities.

Borrow pits proposed to be used exclusively for the extraction of sand, clay and topsoil shall be required to provide a traffic impact assessment report which must be prepared by a professional environmental consulting, planning or engineering firm consistent with subsection b., transportation system, below. A proposed borrow pit operation shall also be required to provide impact assessment reports of compatibility and fill activities related to such borrow pit which shall be permitted to be provided by the applicant, his/her representative or a professional environmental consulting, planning or engineering firm.

The determination of adequacy of any assessment reports required in this section is at the discretion of the board of county commissioners.

The mining impact assessment report shall address the following issues:

**a. Compatibility.** This portion of the report shall address the impact of blasting activities, (if applicable), vibration, noise and sound, generated from the project site and transmitted to the surrounding area; the surrounding character of the area and development in proximity to the proposed mine (i.e., residential and non-residential structures and accessory uses) and environmental, cultural and historical resources. The applicant for the special exception shall identify all design and buffering improvements proposed to mitigate impacts to the surrounding area identified in the report and ensure protection of identified environmental, cultural and historical resources.

The applicant's consultant has addressed compatibility in section 11. "Existing Conditions & Compatibility Report" of the supporting documents. However, staff has concerns regarding compatibility with the surrounding residential developments and the Cedars of Lebanon Cemetery.

**b. Transportation system.** This portion of the report shall include the anticipated impact on the roads and bridges along the proposed hauling route. This is to be assessed in a submitted traffic analysis that identifies existing and projected level of service, projected trip generation, structural stability of the roads and bridges and distribution of traffic. The applicant for the special exception shall identify all improvements proposed to mitigate impacts to the transportation network and impacted roadways.

The applicant has provided a traffic analysis that concludes the roadways included within the hauling route will not fall below level of service "C." The traffic analysis is based on supporting the construction of the proposed nuclear power plants, located approximately two miles south of the mine site. The report estimates a total trip generation of 250 trips per day (240 of which are dump trucks), 24 during peak hours. The trip distribution is stated to be 100 % south on US19 to the power plant property.

This analysis is in conflict with the project description provided by Clay Sweger of Eng, Denman and Associates. Mr. Sweger stated that the borrow pit will provide construction grade materials for local construction projects in Levy County.

**c. Water pumping activities.** Any mining operation that includes water-pumping activities shall not diminish water quality, nor create any run-off to adjacent properties. In order to document compliance with this requirement, the report shall address issues of water quality and run-off to adjacent properties. The applicant shall provide the following prior to issuance of the local permit and operation of the mine:

- i) A water use permit from the applicable Water Management District of the State of Florida.
- ii) An industrial waste permit from the Florida Department of Environmental Protection for any processing or washing of materials or products.



There are no water pumping operations associated with this mining operation (borrow pit). Therefore, no water use permit or industrial waste permit is required.

**d. Fill activities.** Clean fill material shall only be permitted after it has been determined by the county that the proposed finished grade will be compatible with the surrounding area and with existing drainage patterns. The report shall include information regarding the proposed fill, finished grade, and compatibility with surrounding area and existing drainage patterns.

Reclamation with clean fill is included in the special exception use requested. The finished grade will be required to maintain existing drainage patterns and be compatible with the surrounding area. The applicant's consultant has stated that the finish grade, after reclamation, will be the same as the pre-construction grade.

**(8) Documentation/application.** In addition to meeting all application and notice requirements for special exceptions provided in subdivision I and II of division 5 of article XIII; an application for special exception for a major mining operation shall contain all reports, documentation and map illustrations showing that the application complies with all of the requirements contained in subsections II(c) and (d) hereof.

**(9) Application fee.** An application for a special exception for a major mining operation shall be accompanied by the applicable fee set out in the fee schedule maintained by the county development department. The application fee is non refundable, whether the application is ultimately approved or denied.

**(10) Excavation and fill permit application included.** An application for a special exception for a major mining operation shall be accompanied by an application for an excavation and fill permit which meets all the requirements for such permit as provided in this section.

An excavation and fill permit application was submitted with the application.

**(11) Public notice requirement.** In addition to any other notice requirements for a special exception contained within division 5 of article XIII, the extent of the notice required to be provided to surrounding property owners for an application for a special exception for a major mining operation shall be extended from 300 feet to two miles in the event that the proposed major mining operation includes blasting or 50 or more one way truck trips per day. The additional cost incurred by providing notice beyond 300 feet shall be calculated and paid for by the applicant prior to the public hearing on the special exception to be held before the planning commission.

Staff has complied with the additional notice to surrounding property owners based on the traffic generation projections. The applicants will bear the costs of the additional notice.

**(12) Duration of approval; amendment of approval.** Any special exception approval granted for a major mining operation pursuant to the provisions hereof shall be valid for a period specified for completion of all operations, including necessary reclamation as set forth in the approved mining and reclamation plan. The board of county commissioners, as it determines necessary to protect the public interest, may require such changes in the duration of a special exception approval as conditions warrant. The applicant or subsequent owner or operator of an approved major mining operation may also, on any anniversary date of the approval of the special exception, seek an amendment of the special exception conditions in order to vary or expand the scope of the major mining operation by filing an application for amendment to the original special exception. Any such amendment to the original special exception conditions shall meet all requirements and be processed as an original application.

**(13) Transfer of special exception.** Notwithstanding any other provision in this section to the contrary, a special exception approval for a major mining operation shall be issued only in the name of the applicant and may be transferred only when the interest of the applicant in the lands that are the subject of the special exception are transferred. Prior to such transfer, the applicant and the prospective transferee must apply to, and receive approval from, the board of county commissioners for an amendment to the special exception application submitted to the county development department. All financial liability and permit filing obligations shall be transferred at the time the interest in said lands is conducted.

**(14) Liability for major mining operations.** The applicant or operator of any major mining operation that receives special exception approval pursuant to the provisions of this section shall have absolute liability and financial responsibility for any damages to public or private property, human, animal or plant life, or any mineral or water-bearing geologic formations incurred due to mining operations, failure of any dam, spillway or outlet structure of a settling or thickening pond, or failure to properly reclaim mined lands. At or prior to the time of issuance or transfer of the excavation and fill permit for the applicable major mining operation, in order to protect the interests of the board of county commissioners and the public, the applicant shall post with the board the following bonds or other surety in a form approved by the board of county commissioners:

a. For each acre of land designated to be mined, the amount of \$2,000.00 as a reclamation performance bond; and



The construction plans indicate on page C3.00 that approximately 242 acres are to be disturbed by construction. Therefore, a **reclamation performance bond of \$484,000.00** will be required in a form approved by the board of county commissioners. [242 X \$2,000 = \$484,000.00].

b. For each acre foot of storage to be contained in a slime, retention or thickening pond in and above grade, the amount of \$1,000.00. This bond shall remain in effect for as long as unconsolidated slime remains in the pond.

Based on the construction plans submitted with the application, the applicant will not need to provide a performance bond for slime, retention or thickening ponds, as there are none proposed for the project.

**(15) Annual report and inspection.** As a condition of approval of a special exception for a major mining operation, the applicant or operator of such major mining operation shall provide an annual report to the county development department for review by the county engineer documenting compliance with the special exception and excavation and fill permit requirements for the major mining operation. The county engineer shall make an onsite inspection to the major mining operation to assure compliance with the special exception, the excavation and fill permit and any report submitted by the applicant or operator.

**(16) Forfeiture.** Upon a finding of noncompliance with this section, or any special exception condition for a major mining operation, or any approved site plan for the major mining operation or reclamation, the building official shall notify the applicant or operator of the major mining operation in writing of noncompliance and the pending forfeiture of the permit. The applicant or operator shall have 30 days to respond. If compliance is not accomplished within such 30-day period, the major mining operation shall cease and the special exception shall be revoked. Regardless of revocation or compliance with any special exception condition, the applicant shall repair, perform reclamation, or perform any other activity at the major mining operation site that the building official or county engineer deems is necessary in the interest of the public health, safety or welfare.

a. **Appeal.** Any appeal of a noncompliance finding issued in accordance with this subsection shall be submitted to the county development department and the office of the board of county commissioners within 15 days of the date of such noncompliance finding. Such appeal shall be heard by the board of county commissioners at a noticed public hearing. No appeal filed later than 15 days after the date of such notice shall be acted upon by the board of county commissioners.

**(e) Major mining operations in the rural residential (RR) zoning district.** Major mining operations in the rural residential (RR) zoning district may be permitted pursuant to this section provided that the application for the major mining operation and the operation itself complies with the criteria, standards and conditions contained in subsections II.(c) and II.(d) hereof, and, provided further, that such major mining operation meets the requirements and conditions set forth in this

subsection, and provided further, that such major mining operation obtains an excavation and fill permit in accordance with this section. The criteria, standards and conditions contained in subsections II.(c) and II.(d) shall take precedence in a review of a special exception application for a major mining operation in the RR zoning district in the event there is a conflict with provisions of this subsection. The additional requirements set forth in this subsection are intended to maintain an acceptable condition and final grade of the land to support agriculture and residential development. The additional requirements and conditions which must be met by an application for special exception for a major mining operation in a RR zoning district are as follows:

- (1) The minimum tract size for the proposed mining operation shall be ten acres.
- (2) No processing or grading of material shall be permitted in the proposed mining operation.
- (3) Only fill dirt consisting of sand or top soil may be removed from the proposed mining operation site.
- (4) The proposed mining operation shall use mechanical means of extraction only. No blasting shall be permitted.
- (5) The final grade of the land after reclamation shall be relatively level, but in no case shall such final grade be steeper than a three percent grade (three feet vertical per 100 feet horizontal).
- (6) The proposed finished grade will be compatible with the adjacent properties, with pre-existing drainage patterns, and shall not cause offsite impacts of storm water run-off.
- (7) Access to the property line of the proposed mining operation must be via a county or state maintained paved road classified as a major collector or greater. Access to the site is prohibited on local roads within platted, recorded and unrecorded residential areas.
- (8) Hours of operation and days of operation shall be limited to the hours between 7:00 a.m. and 6:00 p.m., Monday through Saturday, unless otherwise stated via conditions to the special exception based on site specific considerations. Operation hours shall be regulated to protect the character of nearby residential areas.
- (9) The entire perimeter of the proposed excavation area will have posted signs placed and maintained by the owner. The dimensions of the signs shall not be less than nine inches by eleven inches and shall be placed no further than 100 feet apart.
- (10) Prior to the initiation of any excavation activities, the applicant shall perform test drilling to establish the depth to the seasonally high water table. A minimum of two feet overburden must remain above the seasonally high-water table at all times. Documentation of such test drilling demonstrating compliance with this provision shall be submitted with the application for the special exception.



(11) There shall be no back-fill permitted. Overburden relocated to permit access to the desired resource, and then spread over the project site, shall not be considered back-fill.

This section is not applicable. The project is located within an F/RR zoning district.

### **III. Excavation and fill permits; application procedures and requirements.**

(a) **Excavation and fill permit required.** Major mining operations, minor excavation and fill activities or operations, any commercial mining or extraction of minerals, resources, or natural resources for sale, or fill or alteration in any way of the natural grade of the land or the grade of the land established at the time of the enactment of this section, which activity or operation is not otherwise vested or excepted herein, shall require the issuance of an excavation and fill permit in accordance with the provisions of this section prior to commencement of such activity or operation. Any major mining operations shall also require the approval of a special exception by the board of county commissioners in accordance with the provisions of this section prior to the commencement of such operations.

(b) **Application requirements.** The following information and documentation shall be required for a complete application for an excavation and fill permit. In the event that the proposed mining operation requires a special exception, the applicant for such mining operation shall also submit a complete application for special exception as required in this section. The required excavation and fill permit application information and documentation listed below is in addition to the required documentation for a special exception approval, and shall be submitted for review simultaneously with such special exception application, if applicable. The minimum information and documentation required for an excavation and fill permit application shall be as follows:

(1) A boundary survey of the subject tract or parcel.

(2) A site plan for the proposed minor excavation and fill operation which shall be prepared at a scale not less than (one inch equals 60 feet) and presented to the county development department prior to any excavation or fill operation. The site plan also shall clearly show all of the following:

a. The shape and dimensions of the entire property and delineate the project area (if a portion of the entire tract).

b. All existing and proposed buildings; dimensions of buildings and distances of all buildings to property lines.

- c. All streets and easements abutting the subject property.
- d. Indicate with a dashed line any water, depressions and sinkholes on the subject property.
- e. Show all storm water management systems and water retention areas on the subject property.
- f. Locate and delineate the proposed areas to be mined, excavated or filled and identify approximate acreage delineated.
- g. Locate and delineate all areas to be used for stock-piles, slurry or settlement ponds, crushing or other processing operations.
- h. Identify the existing uses and approximate distance of existing residences or other structures adjacent to the excavation site.

b. The applicant has not provided the approximate distance of the office building to the property lines.

h. The applicant has not provided the approximate distance of existing residences or other structures adjacent to the excavation site.

- (3) On a map separate from the site plan, the applicant shall show a north arrow and identify proposed hauling routes associated with filling operations or resource sales consistent with subsection II.(d)(3), access requirements, and subsection III.(c)(2), hauling requirements.

The applicant provided a hauling route map that includes SE 147<sup>th</sup> Place, from the mine site (i.e., Knight Farm) to US 19/98. The traffic study and analysis (section 20 of the application) contains information regarding the trip distribution on US 19/98.

The traffic study and analysis is based solely on providing mined materials to the Progress Energy Nuclear Power Plants 1 & 2, which is in conflict with the project narrative provided by Eng, Denman & Associates. There project description states that construction materials produced (construction grade sand) will be used in local construction projects.

- (4) A description of the work to be performed (including all excavation or fill activities or both). The description shall include the purpose of the minor excavation and fill operation, a schedule of the expected duration and phasing, if applicable, of the operation, the type of fill to be placed (if any), a tabulation of the number of cubic yards to be mined or excavated or fill to be placed, the depth of the excavation or the fill placed, and the grade of side slopes associated with the proposed excavation or fill operation.



The applicant has not provided a tabulation of the number of cubic yards to be mined or excavated, or the amount of fill to be returned to the site for reclamation.

(5) For an application where the subject property located in an environmentally sensitive area as designated by the land development regulations or the comprehensive plan, the applicant shall provide a permit or letter of exemption from the appropriate State of Florida Water Management District and the Florida Department of Environmental Protection and any other permitting agency with jurisdiction over the proposed minor excavation and fill operation.

The application does not include the permit required by the Southwest Florida Water Management District for the borrow pit operations. The applicant has provided a letter from SWFWMD stating that they had found the application for said permit complete.

The borrow operation will not require a permit from the Florida Department of Environmental Protection as the SWFWMD is permitting agency with jurisdiction over the proposed excavation and fill operation.

(6) For an application where the subject property is located within the 100-year flood plain adjacent to the Suwannee River the applicant shall provide an environmental resource permit or letter of exemption from the Suwannee River Water Management District.

Mine site is not adjacent to the Suwannee River.

(7) Any excavation for the purpose of creating a pond, or which exceeds the standard of two feet above the high water, wet weather mark shall require a permit or letter of exemption from the applicable State of Florida Water Management District.

The application is not for the purpose of the creation of a pond.

(8) Any minor excavation operation in an existing body of water (ie: pond, lake, stream, canal or river) shall require a permit or letter of exemption from the Florida Department of Environmental Protection or the applicable State of Florida Water Management District.

(9) The application shall document that the proposed minor excavation or fill operation does not interfere with any storm water system currently maintained by a public or private entity. Any cost incurred as the result of excavation that damages public works or infrastructure shall be the responsibility of the permittee.

(10) The application shall document that the minor excavation fill operation does not affect the natural flow or drainage pattern of surface waters that were present prior to the excavation or fill operation.

Sections 8, 9 and 10 above are not applicable to the submitted application, as this is a major mining operation.

**(11) Application fee.** An application for an excavation and fill permit shall be accompanied by the applicable fee set out in the fee schedule maintained by the county development department. The application fee is non refundable, whether the application is ultimately approved or denied.

**(c) Permit review and approval process and requirements.** An application for an excavation and fill permit shall meet the requirements and follow the process set out herein, prior to issuance of the applicable permit and prior to commencement or continuation of any mining operations. In addition to any other requirements contained in this section, an application for excavation and fill permit, or any excavation activities shall meet the following requirements:

**(1) Hauling requirements.** These hauling requirements apply to any excavation and fill activities for which an excavation and fill permit is required as well as the activities exempted from obtaining an excavation and fill permit pursuant to subsection I.(c) hereof. The applicable hauling requirements are as follows:

**a.** No material may be hauled from the subject property, except to satisfy final grading requirements in cases such as, or similar to:

**i)** Removal of excess fill associated with the installation of swimming pools or basements in conjunction with valid building permits.

**ii)** Removal of fill associated with construction of public works on public property.

**b.** Fill may be hauled to or from the subject property for excavation and fill operations that require and have obtained an excavation and fill permit in order to satisfy cut and fill balance requirements for final grading related to pond excavation and storm water management purposes. However, all applicable requirements of this section and of the permit shall apply.

**c.** The off-site hauling of fill and other material if directly related to the operation of an agriculture, silviculture, plant or tree nursery business shall be permitted.

**d.** The permittee and the hauler shall have joint and several liability and financial responsibility for any damages to public or private property, human, animal or plant life due to hauling. Levy County retains the right to recover any cost to repair damages to county maintained or dedicated roads, bridges, and drainage infrastructure caused by hauling related to excavation and fill activities and activities that are exempt from the requirement of obtaining an excavation and fill permit pursuant hereto.



- (2) No excavation activity shall be deeper than a point of two feet above the high water, wet weather mark unless the application includes the creation of a pond.

The details provided on page C0.01 indicate that excavation will occur to a point which exceeds this standard. The detail depicts the depth of excavation will extend to within two feet of clayey or limestone layer, which is shown to be below the seasonal high groundwater table.

- (3) Only mechanical means of excavation may be used (no blasting is permitted).

- (4) No excavation is permitted within 100 feet of the right-of-way of a public road, nor 50 feet of a property line or a private easement. This section shall not prevent leveling of the property, in these set-back areas, to the grade of the adjacent property when done consistent with the provisions of this section and other applicable sections in this Code.

The construction plans submitted with the application demonstrate/depict a violation of this section. The plans indicate an excavation setback of only 50 feet will be provided along SE 147<sup>th</sup> Place, a county maintained roadway, instead of the 100 foot setback required by this section.

- (5) Where excavations create holes, depressions or cavities, the side slope of the excavations shall be left with slope not to exceed a 3 to 1 slope (ie; not more than one-foot rise for each 3 feet horizontal distance).

The construction plans indicate that the slope will not exceed a slope of 1 foot rise for each 4 feet horizontal. However, the angle shown in the detail on page C0.01 shows it much steeper (appears to be reversed).

- (6) Prior to the issuance of an excavation and fill permit, the building official and county engineer shall review the application and plan of the work provided by the applicant for such permit. When a special exception is required for the proposed mining operation, the county engineer shall render a written recommendation to the planning commission and the board of county commissioners.

The county engineer has made recommendations that have been incorporated into the development department's staff conditions of approval.

- (7) No excavation and fill permit or plan shall be approved, which, in the opinion of the county engineer or building official, shall be detrimental to the health, safety or general welfare of adjacent properties or the community. In examining and approving the permit application and the plan, the county engineer and building official shall use, as minimum standards, the criteria set forth in this section.

It is the opinion of the building official that the issuance of an excavation and fill permit for this project would be detrimental to the health, safety and general welfare of adjacent properties. The basis of this opinion result from the incompatibility of the land uses, more specifically, that the mining project will adversely affect the adjacent residential land uses and interrupt the functions of the cemetery.

**(8)** An approved excavation and fill permit and plan shall be conditioned upon the use of land or structures shown on the plan and permit application as permitted. Any substantial deviation from the approved permit or plan shall constitute a violation of this section.

**(9)** Prior to the issuance of an excavation and fill permit, all other required permits or letters of exemption from other applicable state or federal agencies, including but not limited to: Florida Department of Environmental Protection, the applicable State of Florida Water Management District and the Army Corps of Engineers shall be submitted to the building department.

**(d) Operation of permit and permitted activities.** A holder of an excavation and fill permit and all excavation or fill activities shall be subject to and shall follow the requirements set out in this subsection.

**(1)** The permit shall be posted at the entrance of the project site and clearly visible to the public. It shall be the responsibility of the applicant/permittee to post the permit, approved site plan, and project description prior to commencement of any work pursuant to the permit.

**(2) Duration of permit; amendment of permit.** Any excavation and fill permit granted for a minor excavation and fill operation pursuant to the provisions hereof shall be valid for a period specified in such permit, but in no event shall any such permit be valid for more than 90 days. The applicant/permittee may seek an amendment to the permit, the permit conditions or the approved plan; however, any such amendment application shall meet all requirements and be processed as an original application for an excavation and fill permit.

**(3)** The applicant/permittee shall call for an inspection as soon as the excavation or fill activities are completed based on the specified completion date identified on the permit. The county development department shall then, within a reasonable time, visit the site to examine the work for consistency with the approved plan and permit. If the work is found in compliance with the approved permit and plan, the field representative from the development department shall indicate so on the permit posted on the site and mail a certificate of code compliance to the applicant.

Section (d) 1 through (d) 3 are only applicable to minor excavation and fill permits.



(4) **Forfeiture.** Upon a finding of noncompliance with this section, or any excavation and fill permit, permit condition, or any approved plan for applicable minor excavation or fill operation, the building official shall notify the applicant or operator of the minor excavation or fill operation in writing of noncompliance and the pending forfeiture of the permit. The applicant or operator shall have 30 days to respond. If compliance is not accomplished within such 30-day period, the minor excavation or fill operation shall cease and the permit shall be revoked. Regardless of revocation or compliance with any permit condition, the applicant shall repair, perform reclamation, or perform any other activity at the minor excavation or fill site that the building official or county engineer deems is necessary in the interest of the public health, safety or welfare.

a. **Appeal.** Any appeal of a noncompliance finding issued in accordance with this subsection shall be submitted to the county development department and the office of the board of county commissioners within 15 days of the date of such noncompliance finding. Such appeal shall be heard by the board of county commissioners at a noticed public hearing. No appeal filed later than 15 days after the date of such notice shall be acted upon by the board of county commissioners.

(1991 LDR ch. 79, § 6.01(G)(10); Ord. No. 02-07, 9-17-2002; Ord. No. 05-02, § 10, 6-7-2005; Ord. No. 2007-03, § 22, 7-17-2007)

## **Sec. 50-775. Site plans.**

Whenever a site plan is required to be submitted in accordance with any provision of this chapter, and the proposed development is not being submitted as a planned unit development as provided in division 6 of this article, the following shall be the minimum requirements for such site plan:

### **(1) Project identification.**

- a. Title of project or development.
- b. Name of engineer, architect and developer.
- c. North point, scale, date and legal description of proposed site.

The application complies with the requirements of this section.
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### **(2) Existing conditions.**

- a. Boundaries of the property involved, all existing easements, existing buildings, section lines, property lines, existing street paving and rights-of-way, topography, existing surface water areas, existing water mains, sanitary and storm sewers, culverts and other underground structures in and adjacent to the property.

- b. A one inch equals 200 feet aerial photograph of sufficient quality to delineate existing vegetation, or a tree survey prepared by a licensed surveyor or engineer.

Although it is not at a scale of one inch equals 200 feet, the application includes an aerial photograph that sufficiently delineates the existing vegetation, but . [see: Section 9. Photographs]

**(3) Proposed development plans.**

- a. Location and dimensions of proposed uses, setbacks, structure heights, streets, parking and loading areas, docks, surface water areas, fire hydrants, sanitary and storm sewers, culverts, water mains and other underground structures.

- b. Size of proposed lots or parcels.

**(4) Tabulation of proposed development plans.**

- a. Tabulations of total number of gross acres in the site and the acreages and percentages thereof proposed to be devoted to the uses including: uses (residential, commercial, industrial or other nonresidential), streets, parking and loading areas, recreation areas, retention areas and open and enclosed storage areas.

- b. Tabulations of total number of dwelling units by dwelling type within the project.

- c. Proposed development schedule and phasing.

**d. Square footage of floor area by type of structure.**

The development department director or the board of county commissioners, or other provisions of this Code, may require additional information to be included in any site plan submitted pursuant to this section.

The application substantially complies with this section.

There are no dwelling units proposed as part of the project. The site plan shows a mobile office structure located within the staging area, but no dimensions are given (it scales to be approximately 40' X 60' : 2400 sq. ft.).

The project is not to be phased. The applicant estimates the life expectancy of the sand mine to be 20 years, depending on the many factors that would have an influence on that estimation.

(1991 LDR ch. 79, § 6.01(B)(6); Ord. No. 2007-03, § 23, 7-17-2007)



## **DIVISION 5. STANDARDS AND REQUIREMENTS FOR SPECIAL EXCEPTIONS, CONDITIONAL USE PERMITS, VARIANCES, AND APPEALS**

### **Subdivision I. Special Exceptions In General**

#### **Sec. 50-796. Generally.**

Special exceptions, as enumerated in Schedule 1. Use Regulations, of section 50-676 hereof, or as contained in the Levy County Comprehensive Plan shall be permitted only upon authorization by the board of county commissioners subsequent to review by the planning commission. In granting any special exception, the board of county commissioners may require appropriate conditions and safeguards, made a part of the terms on which the special exception is granted, which if not complied with shall be deemed a violation of this article. The board of county commissioners may grant an application for special exception, provided that such application for special exception and the uses proposed therein shall be found by the board of county commissioners to comply with the following requirements or criteria and any other applicable requirements, criteria or standards set forth in this article.

- (1) That the use is a special exception as set forth in Schedule 1. Use Regulations, of section 50-676 hereof or as set forth in the Levy County Comprehensive Plan.

Staff finds that the application complies with this section.

- (2) That the use is so designated, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.

It is the opinion of the development department director (a.k.a. building official) that the use is not located so that the public health, safety, welfare and convenience will be protected.

- (3) That the use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.

The application does not contain any professional opinions or other documentation relating to the effect the excavation and fill operation will have on the adjacent property values. One should consider the fact that the project area is bordered on two sides with residential development (north and west), and on a third with a cemetery and state forest (east). There are several large parcels (ranging from 30 to 70 acres) south of the project area.

(4) That the property that is the subject of the special exception is suitable for the type of use proposed by virtue of its location, shape, topography, and by virtue of its compatibility with adjacent development, with uses allowed in adjacent land use and zoning districts, and with the character of the zoning district where it is located.

Staff has serious concerns relating to compatibility with surrounding development.

(5) That adequate buffering, landscaping and screening are provided as required in this article, or as necessary to provide a visual and sound barrier between adjacent property and the property that is the subject of the special exception.

The determination of adequate screening and buffering as necessary to provide a visual and sound barrier between adjacent property and the property that is the subject of the special exception will be ultimately decided by the board of county commissioners upon recommendation of the planning commission.

Although the site plan indicates that a combination of berms and existing vegetation will be utilized to shield the operation from view and reduce sound emissions, it is staff's opinion that it would be **very difficult** to provide adequate screening and buffering that would be an **effective** visual screen and sound barrier between adjacent residential properties (both developed and undeveloped) and the property that is the subject of the special exception.

These off-site impacts, caused by the use of heavy equipment for the excavation and fill operations, combined with the heavy truck traffic on SE 147<sup>th</sup> Place that will occasionally interfere with cemetery traffic and grave side services, and which will drastically impact the two home sites in King Property subdivision (Unrecorded Plat Book 1, Page 4), are the basis of staff's concern with the compatibility issue.

(6) That adequate off-street parking and loading are provided and ingress and egress are so designed as to cause minimum interference with or congestions of vehicular or pedestrian traffic on abutting streets or of boat or vessel traffic on adjacent waterways.

Staff finds that the proposed staging area (within the project site would likely provide adequate off-street parking. It is staff's opinion that the use of US 19/98 would not cause congestion of vehicular traffic.

Staff find that the ingress and egress through the King Property subdivision is a violation of the provisions of Section 50-719 IL(d) (3) c.



(7) That the use conforms with all applicable regulations governing the district where located, as may otherwise be determined for large-scale developments.

(8) That the use is consistent with the provisions of the Levy County Comprehensive Plan and the Land Development Code, and that the application and use comply with the applicable provisions of subdivision II of this division 5 and with any specific requirements for the use contained in subdivision II of division 3 hereof.

(1991 LDR ch. 79, § 6.01(A); Ord. No. 05-01, § 6, 5-17-2005; Ord. No. 2007-03, § 24, 7-17-2007)

This staff report has pointed out Land Development Code violations. Compatibility issues are a serious concern.

The planning director may provide a separate assessment of consistency with the adopted Levy County Comprehensive Land Use Plan.

#### **Sec. 50-797. Limitations.**

(a) Each special exception is valid only for the specific purposes for which it is granted as indicated in the approved application, plans, drawings or exhibits. Any unauthorized deviation from the approved application, plans, drawings, exhibits, specifications or conditions of a special exception shall be grounds for revocation of the special exception or any action at law or in equity to enforce the provisions of the special exception or of this Code.

(b) Unless a special exception is approved with a condition imposing a specific duration or automatic revocation upon a specific event, and provided that the provisions and conditions of a special exception have not been violated, a special exception shall run with the land and shall not be transferable to a different site.

(c) A special exception does not relieve an applicant, property owner, or user of the special exception property from liability for harm or injury to human health or welfare, plant or animal life, or property caused by its construction or operation. Nor does a special exception allow an applicant, property owner, or user of the special exception property to cause pollution in violation of any county, state, or federal code, ordinance, policies, laws, statutes, rules or regulations.

(d) In the event an application for a special exception has been denied, the board of county commissioners shall not thereafter consider an application for the identical use concerning all or any part of the same property for a period of six months after such denial, except that this limitation may be waived by a majority vote of the board of county commissioners when the board deems such waiver necessary to prevent injustice or to facilitate the proper development of the county. The six-month limitation imposed by the preceding sentence shall not apply to applications for

modification to a previously approved special exception.  
(1991 LDR ch. 79, § 6.01(D); Ord. No. 05-01, § 6, 5-17-2005)

**Sec. 50-798. Application procedures.**

(a) **Written petition.** An application for a special exception shall be obtained from and filed with the zoning official and shall be accompanied by the applicable fee to be established by resolution of the board of county commissioners. The zoning official shall review an application for sufficiency, which includes completeness of the application. If additional data or information is required, the zoning official shall advise the applicant and shall allow a reasonable time for the applicant to provide the additional data or information. Upon a finding by the zoning official that an application is complete, the application shall be scheduled for public hearings before the planning commission at the next planning commission meeting at which such application may reasonably be heard and before the board of county commissioners at a board of county commissioner's meeting in the month following the month of the planning commission meeting. Should an error in an application be discovered prior to a scheduled hearing, the zoning official shall have the discretion to require the applicant to reapply or submit revised or additional information. Special exception applications shall include but not be limited to the following, as applicable:

- (1) Site plans of an appropriate scale showing proposed placement of structures on the property, provisions for ingress and egress, off-street parking and off-street loading areas, refuse and service areas and required yards and other spaces.
- (2) Plans showing proposed locations for utilities hookups.
- (3) Plans for screening and buffers, with references to type, dimensions and character.
- (4) Proposed landscaping.
- (5) Proposed signs and lighting, including type, dimensions and character.
- (6) A legal description of the entire property encompassing the special exception.
- (7) A narrative description of the total project in sufficient detail to provide an understanding of the nature of the development proposal and a statement describing how the special exception meets all the requirements, criteria, and standards for approval set forth in this division 5.
- (8) A list of names and addresses of property owners within 300 feet of the subject property (excluding rights-of-way) with corresponding address labels. This information shall be based on the latest available property records of the property appraiser's office. The applicant shall also provide a map clearly showing the subject property and all of the other properties within 300 feet.



(9) Any other information required by the zoning official or by other provisions of this Code which the zoning official determines is necessary in order to process the application.

(b) **Public hearings.** The zoning official shall review a special exception application, investigate the conditions pertaining to the application, and submit a report to the planning commission prior to its public hearing on the special exception application. The zoning official shall also submit a report to the board of county commissioners prior to its public hearing on the special exception application. The zoning official and the parties in interest shall appear at the hearings in person, by agent, or by attorney. Following a public hearing before the planning commission, the planning commission may make recommendations regarding a special exception application to the board of county commissioners regarding granting, denial, or granting with conditions of the special exception application. Following a public hearing before the board of county commissioners, the board may grant or deny a special exception application, or may grant approval subject to compliance with certain conditions, restrictions or requirements as the board may deem necessary to protect the interest of the public health, safety, morals and welfare, and to assure compliance with the land development code and the Levy County Comprehensive Plan. In the event an applicant elects not to proceed to a board of county commissioners hearing on its special exception application in the month following the planning commission hearing, the applicant shall have a maximum of six months from the date of the planning commission hearing to contact the zoning official to request a public hearing to be scheduled before the board of county commissioners, at which time the zoning official shall schedule the public hearing before the board of county commissioners at the next possible regular meeting date, or a special meeting date, for which notice requirements can be met, and in no event longer than 30 days after notification from the applicant of the desire to schedule the hearing. In the event the applicant does not contact the zoning official within six months after the planning commission meeting, the application shall be deemed to be withdrawn and the applicant shall be required to submit a new special exception application, with the special exception application fee in order to proceed with the application. The review of any special exception application submitted due to the lapse of six months from the planning commission hearing on the first application without the applicant requesting a board of county commissioners' hearing shall be conducted pursuant to the codes, ordinances, rules and regulations in effect as of the date of submission of the second application.

(c) **Notices of public hearings.** Once the zoning official has set the date, time and place for any public hearing on a special exception application before the planning commission or the board of county commissioners, public notice for such hearing shall be published in a newspaper of general circulation in the county prior to the date of the hearing. In addition, the owners of property situated within 300 feet of the subject property shall be mailed written notice of the hearing prior to the date of the hearing by regular first class mail, addressed to the applicable property owner at the address shown on the last available records of the property appraiser. Any such notice by mail shall be considered effective when placed in the United States mail, postage prepaid; failure of an addressee to receive such notice shall not invalidate any proceedings. Both the published notice and the mailed



notices shall contain a description of the request, a brief description of the subject property, and the time, date and place of the hearing, and shall invite all interested persons to appear and be heard. In addition, a sign shall be posted conspicuously on the subject property, and shall contain the time, date and place of the public hearing. Failure to comply strictly with these notice requirements shall not invalidate the proceedings.

(Ord. No. 05-01, § 7, 5-17-2005)

Editor's note: Ord. No. 05-01, § 7, adopted May 17, 2005, repealed the former § 50-798, and enacted a new section as set out herein. The former section 50-798 pertained to modification of recommendations and derived from 1991 LDR ch. 79, § 6.01(E).

Staff has complied with the public notification rules. In this case, all property owners within two (2) miles of the boundary of the project area would have been notified by US Mail, the property posted, and legal advertisements ran.

## **Subdivision II. Special Exception Review Standards**

### **Sec. 50-816. Compliance.**

An application for a special exception shall be approved only if it meets all of the requirements, criteria and standards contained in subdivision I and subdivision II of this division 5 as well as any other requirements for the requested use contained in subdivision II of division 3 or elsewhere in this chapter. Any requirements, criteria, standards, or conditions are not exclusive of any other requirements, criteria, standards, or conditions which may be established by the board of county commissioners due to particular circumstances which are unique to the property or to the application for which the special exception is being requested. Because a special exception is not normally permitted in a particular zoning district, the burden is upon the applicant to document that special exception meets all of the applicable requirements, criteria and standards and that the granting of the special exception will not create a hardship upon adjacent properties as they are currently being used or as they may be used in the future in accordance with the uses allowed in their respective land use map designations and zoning districts.

(1991 LDR ch. 79, § 6.01(B); Ord. No. 2007-03, § 24, 7-17-2007)

### **Sec. 50-817. General standards.**

- (a) The special exception use shall be consistent with the regulations of this article.
- (b) The special exception use shall be consistent with the comprehensive plan for the county.
- (c) The special exception use shall be provided for an effective and unified treatment of the development possibilities on the project site making appropriate provision for the preservation of scenic features and amenities of site and the surrounding areas.



(d) The special exception use shall be planned and developed to harmonize with any existing or projected development in the area surrounding the project site.

(1991 LDR ch. 79, § 6.01(B)(1))

This staff report has documented staff's concerns regarding compatibility with adjacent development, and has identified certain code sections that staff perceives as code violations.

**Sec. 50-818. Design standards.**

(a) All buildings in the layout and design shall be an integral part of the development and shall have convenient access to and from adjacent uses and blocks.

(b) Individual buildings shall be related to each other in design, masses, materials, placement and connections to provide a visually and physically integrated development.

(c) Treatment of the sides and rear of all buildings within the planned development group shall be comparable in amenity and appearance to the treatment given to street frontage of these same buildings.

(d) The design of buildings and the parking facilities shall take advantage of the topography of the project site, where appropriate, to provide separate levels of access.

(e) All building walls shall be so oriented as to ensure adequate light and air exposure to the rooms within.

(f) All buildings shall be arranged so as to avoid undue exposure to concentrated loading or parking facilities wherever possible, and shall be so oriented as to preserve visual and audible privacy between adjacent buildings.

(g) All buildings shall be arranged so as to be accessible to emergency vehicles.  
(1991 LDR ch. 79, § 6.01(B)(2))

This section is not applicable to major mining.

**Sec. 50-819. Landscape design standards.**

(a) Landscape treatment for plazas, roads, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design for the entire project area.

(b) Primary landscape treatment shall consist of shrubs, ground cover and street trees, and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape materials selected should be appropriate to local growing conditions.

(c) Whenever appropriate, existing trees shall be conserved and integrated into the landscape design plan.

(d) All streets bordering the project area shall be planted at appropriate intervals with street trees. (1991 LDR ch. 79, § 6.01(B)(3))

This section is mostly related to large scale developments such as shopping centers and malls.

The subject parcel has been cleared and farmed for many years (90%). There are very few trees along the north and west boundaries, where residential development is predominate.

Based on the application and supporting documents, the applicant intends to incorporate any existing trees (that would be beneficial) into the proposed screening and buffering.

#### **Sec. 50-820. Circulation system design standards.**

(a) There shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking and loading space.

(b) Roads, pedestrian walks and open space shall be designed as integral parts of an overall site design. Roads, pedestrian walks and open space shall be properly related to existing and proposed buildings and appropriately landscaped.

(c) Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.

(d) Landscaped, paved and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas and adjacent buildings.

(e) Materials and design of paving, lighting, fixtures, retaining walls, fences, curb benches, etc., shall be of good appearance, easily maintained and indicative of their function. (1991 LDR ch. 79, § 6.01(B)(4))

This section is related to large scale developments, such as shopping centers and malls.



**Sec. 50-821. Parking and loading design standards.**

- (a) Parking facilities shall be landscaped and screened from public view to the extent necessary to eliminate unsightliness and monotony of parked cars.
  - (b) Pedestrian connections between parking areas and buildings shall be via special pedestrian walkways and/or elevators.
  - (c) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping, ease of access, and shall be developed as an integral part of an overall site design.
  - (d) Any above grade loading facility should be screened from public view to the extent necessary to eliminate unsightliness.
- (1991 LDR ch. 79, § 6.01(B)(5))  
Cross references: Traffic and vehicles, ch. 90.

Staff finds this section is related to large scale developments, such as shopping centers and malls. The applicant does not propose to landscape the staging area or any other area.

**Sec. 50-822. Reserved.****Sec. 50-823. Visual barriers.**

Where required, a visual barrier a minimum of six feet high shall be constructed, consisting of any one or any combination of the following:

- (1) A fence along any road frontage of the subject property, which shall consist of an opaque decorative wood or masonry fence no higher than ten feet. The fence around the remainder of the perimeter of the subject property shall consist of an opaque fence that may consist of masonry or wood construction, or of a chain link with sufficient aluminum slats to render it opaque.
  - (2) An irrigated berm.
  - (3) Non-deciduous, living vegetation, spaced in a manner, which, at the time of planting and thereafter, will constitute an unbroken screen.
  - (4) Masonry fencing, of decorative brick or concrete block and stucco, designed with a landscape theme that provides an unbroken screen and complements the character of the neighborhood.
- (1991 LDR ch. 79, § 6.01(B)(7); Ord. No. 2007-06, § 10, 11-20-2007)

The applicant proposes to use earthen berms to create a visual barrier. No decorative fences or walls are proposed. [See section 11 "Existing Conditions and Compatibility Report" of the application, and the details provided in the construction plans (i.e., grading plans)].

### **End Staff Report**

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### **Staff Recommendations:**

Should the planning commission, and subsequently the Board of County Commissioners upon receiving a recommendation from the Planning Commission, find that application SE 1-12 for Major Mining and the supporting documents accompanying application SE 1-12 are sufficient for review and found consistent with the Comprehensive Land Use Plan and Land Development Code, staff recommends the following conditions of approval be attached to such approval:

[See attached staff recommendations]