

MINUTES
LAKE COUNTY GREEN SWAMP MINING COMMITTEE
June 28, 2012

The Lake County Green Swamp Mining Committee met on Thursday, June 28, 2012 in the Commission Chambers on the second floor of the County Administration Building.

Members Present:

Tracy Mouncey , Chairman
Nancy H. Fullerton
Kraig McLane
J. Michael O’Berry
Douglas Dufresne, P.G.

Members Not Present:

Steve Adams
Commissioner Welton G. Cadwell, Liaison

Staff Present:

Brian T. Sheahan, AICP, Planning Manager, Planning and Community Design Division
Scott Catusus, Environmental Specialist, Code Enforcement Division
Melanie Marsh, Deputy County Attorney
Anita Greiner, Chief Planner, Planning & Community Design Division

Outside Agency Staff:

Rebecca Jetton, Administrator of the Areas of Critical State Concern Program,
Department of Economic Opportunity

Chairman Tracy Mouncey called the meeting to order at 9:32 a.m. and led the Pledge of Allegiance.

Ms. Mouncey noted that they received the agenda for today’s meeting and asked if anyone had any changes. No changes were suggested.

MINUTES

MOTION by J. Michael O’Berry, SECONDED by Nancy Fullerton to APPROVE the May 17, 2012 Lake County Mining Committee minutes, as submitted.

FOR: Mouncey, Fullerton, McLane, O’Berry, Dufresne
AGAINST: None
NOT PRESENT: Adams
MOTION CARRIED: 5-0

OPENING REMARKS

Ms. Mouncey noted that the Committee received draft objectives and recommendations with their packets; she asked everyone to take a moment and review what they received. She stated that they will review those objectives and recommendations and then move to a working session.

OBJECTIVES AND RECOMMENDATIONS REVIEW

Ms. Mouncey read the first four recommendations under the objective “Ensuring any existing or proposed regulations are clear”. She asked if anyone on the Committee had any issues with the recommendations; no one on the Committee had an issue. Ms. Mouncey read the fifth recommendation, “The terms prime recharge area, recharge area and protected aquifer recharge areas should be revised to be consistent with the Water Management District’s [definitions]. If the terms are limited in scope to the Wekiva River Protection Area and/or Wekiva Study Area, it should be specified for clarity. It is unclear how, or if, they apply to the Green Swamp as currently written” and commented that the terms listed in this bullet are limited to the Wekiva area only. She pointed out that the Water Management District does not have a prohibition on mining based on recharge areas in the Green Swamp and that it needs to be clarified that the terms apply to the Wekiva area only. She asked if the Wekiva rule is in the Statutes. Mr. Sheahan stated that the rule is in the Guide Policies [*Guidelines for Preparing Comprehensive Plan Amendments for the Wekiva Study Area pursuant to The Wekiva Parkway and Protection Act, Florida DCA, 2006*] that were provided by the State. Ms. Mouncey explained that the Code needs to clearly state that the terms apply to the Wekiva area only and the definitions of the terms need to be consistent with the Water Management District’s definitions.

Ms. Mouncey read the sixth recommendation “Change references to “owner” to “owner of control” on applications related to mining”. Mr. O’Berry asked how this would be inserted into the application. He noted that the owner may submit an application, but an operator with a lease may submit the application as well. He is not sure that “owner of control” is appropriate language. Mr. Sheahan reminded the Committee that this recommendation was added by the Committee for the occasions when an owner of the property has leased the property long term to a mining company and has nothing to do with the application. He explained that an owner’s affidavit or a limited power-of-attorney is currently used as part of the application; if you have authorization to submit for the application, that is all that is needed and the document can say owner throughout the regulatory documents. Mr. O’Berry noted that with the owner’s affidavit being part of the package, it would dismiss any issue. Ms. Mouncey explained that using the owner’s affidavit is standard practice and if everyone is alright with using the owner’s affidavit, this recommendation could be eliminated. No one on the Committee had an issue with using the owner’s affidavit.

Ms. Mouncey moved to the next objective, “Eliminate overlapping or duplicative review”. She read the first bullet under that objective, “Water quantity affects the adequacy of habitat”. Mr. Sheahan noted that Ms. Fullerton suggested this recommendation. Ms. Fullerton explained that the worry is water going elsewhere or evaporating; she stated her concern, as well as the County’s and Committee’s concern, is maintaining the wetlands. Ms. Mouncey explained that water quantity regulations and monitoring are ongoing and consistent. If there is an issue with the water quantity, there are mechanisms in place to stop the activity until the water quantity returns to maintain the habitat. Ms. Fullerton stated that she reviewed the presentations given to her in an earlier meeting and many of her questions of how things are done were answered. She noted that the Land Development Regulations and Comprehensive Plan identifies what needs to be protected, but does not identify how it is protected. Mr. Sheahan explained that the overall controlling document is the State Statute; in the Green Swamp, the Principles for Guiding Development are required to be implemented by rule in the Statute. The Comprehensive Plan restates and adopted those Principles; there are objectives and policies within each goal of the Plan to implement and ensure compliance of the Principles. The State reviewed the Comprehensive Plan to ensure compliance with the Principles and issued a notice of compliance

that the Lake County Comprehensive Plan met those Principles. The County then adopts regulatory requirements, which are the Land Development Regulations; they explain how the Principles are regulated [applied]. Currently, the mining ordinance is the implementing document for mining uses. Mr. Sheahan further explained that the mining process is a multi-layered process; if you have a raw piece of land and you want to develop a mine on it, you have to meet the State requirements, which generally involve water quality, water quantity and flora and fauna issues. The next step is with the County, which can have more stringent requirements than the State, excluding, anything to do with the consumptive use of water, which is solely delegated to the St. John's Water Management District and the South West Florida Water Management District. With the flora and fauna issues, some of those aspects are reviewed by the U.S. Fish and Wildlife Service, which is Federal and the Florida Fish and Wildlife Conservation Commission, which is State. The Florida Fish and Wildlife Conservation Commission reviews for compliance with the Florida Administrative Code, 62C. Mr. Sheahan reminded the Committee that Mr. Adams gave testimony in an earlier meeting that we want to make sure we are consistent with 62C, F.A.C. He also noted that we can implement more stringent regulations, but the question is, does the County want to get into that business or does it have the expertise to do so. Ms. Fullerton asked mining industry members, when the permit is being filled out and the mining company is working with their consultants, are they specific on how they will be protecting the Green Swamp. Mr. Sheahan placed a current permit application for a mine on the screen for everyone to see and reviewed each document that is required and noted that studies are also submitted with the application documents. Ms. Mouncey explained that the mining company hires a scientist to complete the reports, which is submitted to the Water Management District Scientist to review, after which it is sent to the County to review. Mr. O'Berry clarified that the supporting documents can be completed by the mine operator, but frequently they are completed by a consultant specializing in those types of activities, principally a Hydro-geologist. Mr. O'Berry added that all of the documents are reviewed by the District in terms of their analysis for secondary impacts so that the mine is in full compliance with all of the relative regulations, should they issue permits. Ms. Fullerton asked if these documents go to the DCA, Rebecca Jetton, for review. Mr. Sheahan explained that when the application is submitted to the County for a mining site plan approval, if it is within the Green Swamp, it is transmitted to the State Area of Critical State Concern for their review. Mr. O'Berry further clarified that a mine operator has to go through the Water Management District for consumptive use permitting. The water quantity issues are directly evaluated and assessed as part of that process and the Bureau of Mining and Material Regulations take care of the environmental resource permitting (ERP), which addresses water quality issues and typically the ERP serves as water quality certification to the Army Corp of Engineers when there are wetland impacts. At the County level, the operator provides those documents before the operating permit phase to show the County that all of the approvals have been obtained, which allows for a permitted mining operation. The County can be more stringent on certain aspects, such as reclamation standards and Lake County is more stringent in that area. The County cannot be more stringent on water quantity issues, as stated earlier. All of the processes go together to complete the picture to ensure the environment is protected along with a full range of issues that have to be addressed throughout the permit processes. Ms. Fullerton asked if the County could add additional requirements to stop evaporation of the water from the lakes. Mr. O'Berry answered that evaporation losses are specifically addressed in the permits with the Water Management District; an analysis of the increase evaporative potential is compared to the evapotranspiration that existed prior to the development of the site, they review the differential and whether that differential would be detrimental to the environment, such as water levels, wetlands and the like in that area. Ms. Mouncey asked Ms. Fullerton if she is comfortable in knowing that water quantity issues are being regulated and monitored. Ms. Fullerton affirmed that she was. Mr. Sheahan asked if this

bullet point could be removed from the list. Ms. Mouncey stated it could be removed, unless anyone objected. There were no objections.

Ms. Mouncey read the second bullet, "Revise any habitat reclamation standards; should be consistent with 62C, F.A.C.". She noted that this was added to make sure we are consistent with those rules. Mr. O'Berry added that 62C-39 is specific to sand mining and if they are referring to only sand mining, it is appropriate to mention 62C-39. Mr. Sheahan stated that he gave the Committee a copy of the Code; it is the State regulations on the protection of wildlife.

Ms. Mouncey read the next objective, "Ensuring the water quality and quantity are maintained or improved". She noted that there were no recommendations under this objective. She asked if the Committee is comfortable knowing that this is well handled by the Water Management District and preempted by the County. Ms. Fullerton asked how this is going to be ensured. Mr. Sheahan explained that the County currently requires the first inch of storm water from a 25-year storm be retained onsite and any storm water runoff from impervious surfaces are retained onsite. Mr. O'Berry stated that there are Federal rules on this as well. Rebecca Jetton, Administrator of the Areas of Critical State Concern Program, Department of Economic Opportunity, added that within the Land Development Regulations there are requirements where hydrologic soils exist as well. Mr. Sheahan reviewed the Green Swamp regulations and noted that in Section 8.00.05.b, there are specific review criteria. He read those specific regulations and noted that these requirements are part of the current regulations. Ms. Mouncey stated that she believes that there are adequate State and County regulations. No one objected.

Ms. Mouncey read the next objective, "Prevention, avoidance or mitigation of mining impacts to wildlife and habitat." and the first bullet, "Ensuring consistency with U.S. FWS and FFFWCC rules and regulations." Ms. Mouncey asked if this was stated in the regulations already. Mr. Sheahan answered that it is. Ms. Mouncey read the second bullet, "Maintaining existing open space requirements to protect a portion of the upland area from development." She stated that essentially we are deferring that open space requirements are there and that it is adequate to protect the wildlife and habitat in the Green Swamp and that any post land use request has to come back before the Board for approval. She noted that open space areas cannot be impacted. Ms. Fullerton asked if the open space remained with the property after the mine is complete, to protect the future development of the land. Ms. Mouncey stated that the open space goes with the land and if that is changed, it would have to be done by the Board. Ms. Fullerton asked Ms. Jetton if the open space requirement would protect the land from subsequent development of houses. Ms. Jetton answered that the open space requirements are excellent, but she is not sure if the open space continues on after the conditional use permit is complete, anyone could attempt to change the land use to allow a higher density or intensity. Ms. Jetton asked if the open space is a conservation easement. Mr. Sheahan answered that the open space could be done through a property owners association, placed in a conservation easement or it could be dedicated. He stated that anyone at any time could apply for a land use change; it does not mean that they will receive it, but they can apply for it. Mr. O'Berry asked given the restrictions associated with the Green Swamp, if a mine that is subject to the requirements of upland preservations and open space is complete and a land use change request is approved, will those same requirements for open space apply on that property. Mr. Sheahan gave an example and explained that open space requirements do not transfer over to a new land use category; the open space would be whatever is required in the new future land use category. Mr. Sheahan stated that you cannot mix conservation easements with open space; if a conservation easement is required, it runs with the land and that would not change. Ms. Jetton asked if someone is developing a mine are the wetlands and flood zone required to be placed in a conservation easement. Mr. Sheahan explained that the wetlands are required to be placed in a conservation easement, but not the

floodplain area. Ms. Marsh explained if a comprehensive plan amendment is granted and the future land use is changed, you are allowed to develop at the percentages allowed in the new future land use category. She further explained that a conservation easement can be released by the grantee, depending on how it is written. Even if it states in perpetuity, there is always the option to release it. Mr. O'Berry pointed out that any new proposed activity on a completed mine site will have to go before the Board for approval. He also noted that when a mine site is completed, the property is predominantly a water body, which cannot be developed unless it is filled. He further noted that in his opinion, there are sufficient restrictive aspects associated with the designation of the land uses that will make any future development probably unlikely. Ms. Mouncey stated that she concurred and noted that there is already a 90 percent open space requirement [*in the Green Swamp Core FLUC*] and didn't know how that could be made more restrictive and still have mining as a viable industry in the County; she does not feel there should be a larger open space requirement in the Green Swamp. Ms. Fullerton gave an example of an existing mine in the Green Swamp and noted that once it goes out of business and someone wants to develop it, it should be protected, because it is a consequence of mining. Ms. Mouncey noted that it is protected through the open space requirement. Ms. Fullerton stated that this is a danger area or an area of opportunity; she asked if conservation easements are a good method to protect the future development. Ms. Mouncey explained that conservation easements are required on areas that need to be preserved, like areas of critical habitat. In addition, there are also open space requirements. She further explained that any restrictions on top of that, to do with mining, could bring them dangerously close to Burt Harris issues. Mr. O'Berry agreed and noted that elected bodies, like the Commissioners, have to be sensitive to the protection of private property rights and they cannot be overly aggressive in demanding that property be taken out of the ownership or control of a landowner. Ms. Fullerton asked if there are any opportunities to reinstate the Green Swamp Land Authority Agency. Ms. Jetton explained that would have to be done through a legislative change and noted that there is a state department that is responsible for land acquisition; she pointed out that there has been recent prioritizing of land within the Green Swamp, separating it out to make it more competitive for land acquisition. The Green Swamp is targeted as a priority acquisition by the State's Land Acquisition Groups, so the same program is in place; the only difference is you do not have a local citizen's group making the recommendations of which lands should be purchased. Ms. Fullerton stated that she feels the Committee's goal is to protect the Green Swamp from mining. She feels that could be done by tightening up conservation easement requirements, purchasing land and requiring the sand mine companies reclaim the land to protect habitat and water quality. Ms. Mouncey stated that reclamation requirements are in place at this time. Mr. O'Berry stated that current regulations specific to the Green Swamp already calls into question the economic feasibility of mining. He gave an example of mining an area of land in the Green Swamp and noted the restrictions, including the soil disturbance criteria regulations (which can further reduce the area you can mine) and threatened or endangered species or federally listed species mitigation requirements, which can be lengthy and expensive to mitigate, if you are able to mitigate at all. Ms. Mouncey asked if anyone had a recommendation of anything more that can be done or does everyone believe the existing requirements are adequate. Ms. Fullerton stated that she does not want to vote for this right now, she wants to see further investigation of possible opportunities for protecting the land. Mr. Sheahan asked Ms. Fullerton if she is requesting that the County purchase or acquire open space land for conservation. Ms. Fullerton stated that she wants that investigated. Ms. Mouncey asked Ms. Fullerton if she is proposing a recommendation to the Board for the County to purchase the open space land. Ms. Fullerton stated that she would like the possibility of the County purchasing the land investigated. Mr. O'Berry explained that based on the current state of regulations and how the regulations restrict the availability of land for mining within the Green Swamp, he cannot support any more restrictive or protective measures associated with mining in the Green Swamp, because there is already a high level of protection

there. The mining industry is already heavily regulated, there are many layers of protection and the County has layers of protection on top of what the State and Federal government have; therefore, he cannot support additional protective measures. He noted that investigating the viability of the County acquiring land is an additional protective measure for the County, which is under the purview of the County already. Ms. Mouncey suggested that instead of making the acquiring of the land by the County a recommendation, that it be part of the Committee's discussion with the Board. Ms. Jetton suggested investigating the opportunity to track and transfer development rights to an area outside of the Green Swamp that is more suitable for urban development, which could be an incentive to keep the land in open space. Ms. Mouncey explained that transfer of development rights is not a restriction to the mining regulations in the Green Swamp, so it would not be within the Committee's purview, but the Committee could discuss the idea with the Board. Mr. McLane asked Mr. Sheahan to read the Board's charge to the Committee. Mr. Sheahan read the charge, "The Green Swamp Mining Committee is tasked with evaluating whether additional protections with mining are necessary for new or expanded mines within the Green Swamp Area of Critical State Concern." Ms. Marsh explained that as an advisory committee, if they feel what happens after the mine is done is within their purview, they can make recommendations and the Board will decide whether they will go with the recommendation. As a committee, they need to decide whether or not it is within their task. Ms. Mouncey asked Ms. Fullerton if she was comfortable with the open space requirement and other items to be presented before the Board, or did she have additional restrictions to offer as far as mining. Ms. Fullerton stated that she would like to reserve the right to review the issue during the Committee's future discussions; she does not see the need for a motion or a decision at this point.

Ms. Mouncey read the last objective, "Ensuring Sand Mining is not prohibited in the Green Swamp" and reminded the Committee that they previously voted to not prohibit sand mining in the Green Swamp.

Ms. Mouncey asked the Committee members if they would like a "other items to be considered" section added to the objectives and if so, do they want the two bullet points shown on the overhead added to that section. Mr. Sheahan read the two bullet points on the overhead, "investigate the viability of the county acquiring lands to set aside for open space for long-term public conservation" and "consider a TDR program to allow transfer of development rights to areas outside of the Green Swamp". He asked Ms. Jetton if DCA would consider the transfer of development rights to go to the Ridge area of the Green Swamp. Mr. Jetton stated that if they would keep the same open space requirement and storm water treatment requirements, she would not have a problem with it. Ms. Jetton asked what it would take to get the mining companies to contribute some of the open space of the mine land to the County for parks. Ms. Mouncey stated that would be on a case-by-case basis and probably 50 percent of the operators do not own the land that they mine. **Mr. Sheahan spoke about the Ridge Future Land Use Category and showed the Committee where it is located; he noted that sand mining is not allowed within the Ridge Future Land Use Category.** He also noted that if the transfer of development rights is directed to the Ridge area, where there are services and utilities, it would keep the Green Swamp density within the Green Swamp. Ms. Mouncey questioned whether that would be a viable transfer and agreed that it would make sense to keep the density within the Green Swamp. Mr. Sheahan stated that all of south Lake County is designated as habitat for the sand skink. Mr. O'Berry stated that can be a problem from a development standpoint and noted that a substantial price will be paid for impacts in that area. Ms. Mouncey stated that she has not heard any recommendations from the Committee members to add any recommendations. She asked the Committee to review what was discussed today and then she would like a motion to accept the objectives and recommendations as written (Green Swamp Mining Committee Major Objectives & Issues, dated June 28, 2012, attached as a reference).

In reference to the recommendation concerning the terms prime recharge area, recharge area and protected aquifer recharge areas, Mr. Sheahan reminded the Committee that the recommendation was to make sure where the terms are used that it is clear that they only apply to that particular area. He does not believe that the terms are used in the Green Swamp policies, but he will make sure and address this with the Committee at the next meeting. Mr. McLane clarified that the Water Management District does not have an official map of recharge, they are constantly acquiring data and they run maps for different studies and purposes. The prime recharge area language came out of statutory language years back, but there was no guidance on what prime meant. Recharge is driven from rainfall, but can occur from lakes under the aquifer. He noted that with recharge, it is a case-by-case basis, if the rules are met, permits are issued. If the rules are not met, they work with the applicant to meet the rules. Typically, with storm water treatment and storage requirements on the property, recharge functions are retained on the property, which is a big part of what storm water systems are used for, they hold back the rate of discharge.

Ms. Jetton and the Committee discussed the idea of TDRs within the Green Swamp for mined property.

MOTION by J. Michael O’Berry, SECONDED by Douglas Dufresne to accept the objectives and recommendations as written.

FOR: Mouncey, Fullerton, McLane, O’Berry, Dufresne
AGAINST: None
NOT PRESENT: Adams
MOTION CARRIED: 5-0

Ms. Mouncey opened the meeting to the public for comment. No one from the public spoke.

Ms. Mouncey stated that there was not going to be a July meeting, the next meeting will be held on August 2, 2012. She asked Mr. Sheahan to provide the Committee with the objectives and recommendations for their review before the August meeting. She asked the Committee to be prepared to have a document ready to give to the Board for their consideration at the August meeting.

ADJOURNMENT

MOTION by J. Michael O’Berry, SECONDED by Douglas Dufresne to adjourn the meeting at 11:23 a.m.

FOR: Mouncey, Fullerton, McLane, O’Berry, Dufresne
AGAINST: None
NOT PRESENT: Adams
MOTION CARRIED: 5-0

Respectfully submitted,

Tracy Mouncey, Chairman

GREEN SWAMP MINING COMMITTEE
 MAJOR OBJECTIVES & ISSUES
 June 28, 2012

OBJECTIVE	RECOMMENDATION	DATE OF RECOMMENDATION
<p>Ensuring any existing or proposed regulations are clear.</p>	<ul style="list-style-type: none"> • Revise regulations to replace the term “Restoration” with the term “Reclamation.” This more accurately reflects what occurs when mining is complete and is consistent with the term used by the FDEP and SJRWMD. • Revise Chapter VIII Green Swamp Land Development Regulations to remove outdated agency references. • Include prohibition of mining, except sand mining, in the Green Swamp in the Mining Ordinance (Section 6.06 LDR) • Ensure Section 8.00.05 (B)(7) under the Development Review Criteria of Chapter VIII Green Swamp Land Development Regulations should be revised to be consistent with the 2030 Comprehensive Plan and to ensure consistency of other sections with other regulations (Open space, submittal requirements, development area, etc.) • The terms Prime Recharge Area, Recharge Area and Protected Aquifer Recharge Areas should be revised to be consistent with the Water Management Districts. If the term is limited in scope to the Wekiva River Protection Area and/or Wekiva Study Area it should be specified for clarity. It is unclear how, or if, they apply to the Green Swamp as currently written. • Change references to “owner” to “owner of control” on applications related to mining. 	<p style="text-align: center;">4/19/12 5/18/12</p>

GREEN SWAMP MINING COMMITTEE
MAJOR OBJECTIVES & ISSUES
June 28, 2012

<p>Eliminate overlapping or duplicative review.</p>	<ul style="list-style-type: none"> • Water quantity affects the adequacy of habitat. • Revise any Habitat Reclamation Standards should be consistent with 62C, F.A.C. 	<p>3/08/12 3/08/12</p>
<p>Ensuring the water quality and quantity are maintained or improved.</p>		
<p>Prevention, avoidance or mitigation of mining impacts to wildlife and habitat.</p>	<ul style="list-style-type: none"> • Ensure consistency with U.S. FWS and FFWCC rules and regulations. • Maintain existing Open Space requirements to protect a portion of the upland area from development. For example, in the Green Swamp Rural Future Land Use Category, 60% of the upland is preserved as open space and may not be developed when an application is submitted for any type of development, including mining. Current open space requirements for upland area are 60% for GS Rural, 80% for GS Rural Conservation, & 90% for GS Core Conservation. 	<p>3/08/12, 4/19/12</p>
<p>Ensuring Sand Mining is not prohibited in the Green Swamp.</p>	<ul style="list-style-type: none"> • Do not prohibit Sand Mining in Green Swamp 	<p>4/19/12</p>