

LAKE COUNTY PLANNING AND COMMUNITY DESIGN ANALYSIS PETITION TO REZONE PROPERTY

PLANNING and ZONING BOARD
January 7, 2014



BOARD OF COUNTY COMMISSIONERS
January 28, 2014

PH #21-13-1 Rubin Groves of Clermont PUD	Case Manager: Rick Hartenstein, AICP, CPM, Senior Planner	Agenda Item # 4
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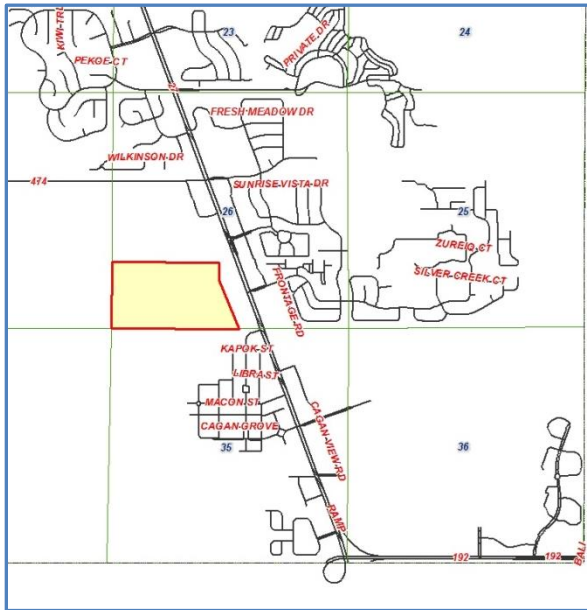
Owner: Rubin Groves of Clermont, LLC / Sheldon Rubin (the "Owner")

Applicant: Rubin Groves of Clermont, LLC / Sheldon Rubin (the "Applicant")

Requested Action: Amend the Planned Unit Development (PUD) Zoning District (Ordinance #2013-8) on 131 +/- acres to allow mass grading and overburden removal exceeding 200% of the stormwater volume requirement of a previously approved Mixed-Use Planned Unit Development within the Green Swamp Area of Critical State Concern.

- Site Location and Information -

Approximate site location shown in red



Size	131 +/- Acres	
Location	Sections 26 & 27 / Township 24S / Range 26E, Four Corners area south of Clermont – west and southwest of the intersection of Woodcrest Way and US 27.	
Alt. Key Number(s)	1595240, 2510480, 1071011, & 1595169	
Future Land Use (FLU)	Green Swamp Ridge	
Zoning District	Existing	Proposed
	Planned Unit Development (PUD)	Planned Unit Development (PUD)
Impervious Surface Ratio (ISR)	45% Max.	45% Max.
Floor Area Ratio (FAR)	25% Max	25% Max
Open Space	40%	40%
Joint Planning Area	None	
Utility Area	Lake Utilities, Inc.	
Site Utilities	Central Water & Sewer (proposed)	
Road District	US Hwy 27 - Arterial Woodcrest Way - Local	
Flood Zone / FIRM Panel	Zone X – Panel #12069C0725D Effective July 3, 2002	
Commissioner's District	1 – Sullivan	

Site Visit(s): December 20, 2013

Sign(s) Posted: December 20, 2013 - (3 Signs)

Land Use Table

Direction	Future Land Use	Zoning	Existing Use	Comments
North	Green Swamp Ridge	PUD & C-1	Undeveloped PUD, Restaurant, & Cafe	None
South	Cagan Crossings	DR1/PUD	Mixture of Single-Family, Multi-Family, and Commercial Uses	Cagan Crossings PUD
East	Urban Low	C-1, CP, & PUD	Mixture of Vacant Commercial Land, Single-Family, Multi-Family, and Developed Commercial Uses	Sunrise Lakes PUD Woodridge PUD Cagan Crossing PUD
West	Green Swamp Rural Conservation	A	Citrus Grove and Wetland	None

STAFF RECOMMENDATION: Staff recommends **DENIAL** of the request to amend Ordinance #2013-8, finding the proposed request for Mass Grading meets the criteria for mining which is inconsistent with the Comprehensive Plan and Land Development Regulations within the Green Swamp Area of Critical State Concern as stated in the Findings of Fact.

PLANNING and ZONING BOARD RECOMMENDATION: The Board recommended **APPROVAL** to the amendment with a 4-0 vote subject to the attached to the conditions set forth in the attached Ordinance.

- Summary of Analysis -

The Applicant is requesting to amend the Planned Unit Development (PUD) Zoning District (Ordinance #2013-8) to “mass grade” the site under a provision in Section 6.06.01.F, Land Development Regulations (LDR) that allows the removal of up to 200% of the material removed for minimum stormwater retention volume for sale off-site, or the removal of greater than 200% if necessary for development of the site given physical factors of the land or permitting requirements. The Applicant states a desire to develop the Mixed-Use PUD as a housing community for the elderly and disabled and that the removal of the material is necessary for the safety of the future residents. The Applicant argues the removal of the material is not mining. This argument is posed because mining is prohibited in the Green Swamp Ridge FLUC.

Taken in parts, the application proposes mass grading for the purposes of developing a housing community for the elderly and disabled; however, the applicant has failed to demonstrate that the mass grading is necessary, as more specifically detailed below:

Development for the Elderly and Disabled Issue

The Applicant is proposing a development for the elderly and disabled and argues the Mass Grading and severe elevation change is necessary to provide a fairly level community to meet this market’s needs. There are many examples in the Clermont area and even the adjacent communities where similar (or even steeper) grades exist that were permitted as Adult Communities and no severe grading was necessary for their use. These include, but are not limited to, Kings Ridge, Summit Greens and Greater Hills Subdivisions. Further, the Applicant has provided no studies or expert opinions that such a severe grading is beneficial to such a community.

Grading Issue

The LDRs state that “lot grading” is the “movement, extraction and/or placement of soils within the limits of an individual residential lot or parcel boundary.” (Section 9.07.14.A, LDR). The LDRs further state that

when performing lot grading, “[e]levation changes in topography shall not exceed a maximum of ten (10) feet except for the footprint of the structure.” (Section 9.07.14.A.3, LDR).

The Applicant proposes to excavate the material for transport and sale to another location. The proposed mass grading of this 131 acre property would result in an elevation change in excess of 36 feet and therefore violates the grading limitation provided in LDR Section 9.07.14.A.3 which limits elevation changes to a maximum of 10-feet.

Mining Issue

The Comprehensive Plan defines *Mining Activities* as:

The mining of minerals, ore or other naturally occurring materials from the earth by whatever method, including the removal of overburden for the purpose of extracting and removing from the site such underlying deposits and all associated clearing, grading, construction, processing, transportation and reclamation on the property, and includes the term pre-mining activities and lake creation but shall not be deemed to include activities associated with site surveying, environmental monitoring, mineral exploration or the sinking or operation of test wells and similar activities.

The Comprehensive Plan defines *Borrow Activities* as “Mining Activities with no onsite processing of excavated materials”

The Applicant has indicated a desire to remove enough material to reduce the elevation by roughly 36 feet, and to transport the material off-site, which clearly meets the definitions stated above. Mining of aggregate is specifically prohibited within the Green Swamp Area of Critical State Concern (ACSC). ~~Although Sand Mining is permitted elsewhere in the Green Swamp ACSC, all mining is prohibited in the Green Swamp Ridge Future Land Use Category. Sand Mining is permitted in the other FLUCs of the Green Swamp ACSC, but all mining is prohibited in the Green Swamp Ridge Future Land Use Category.~~

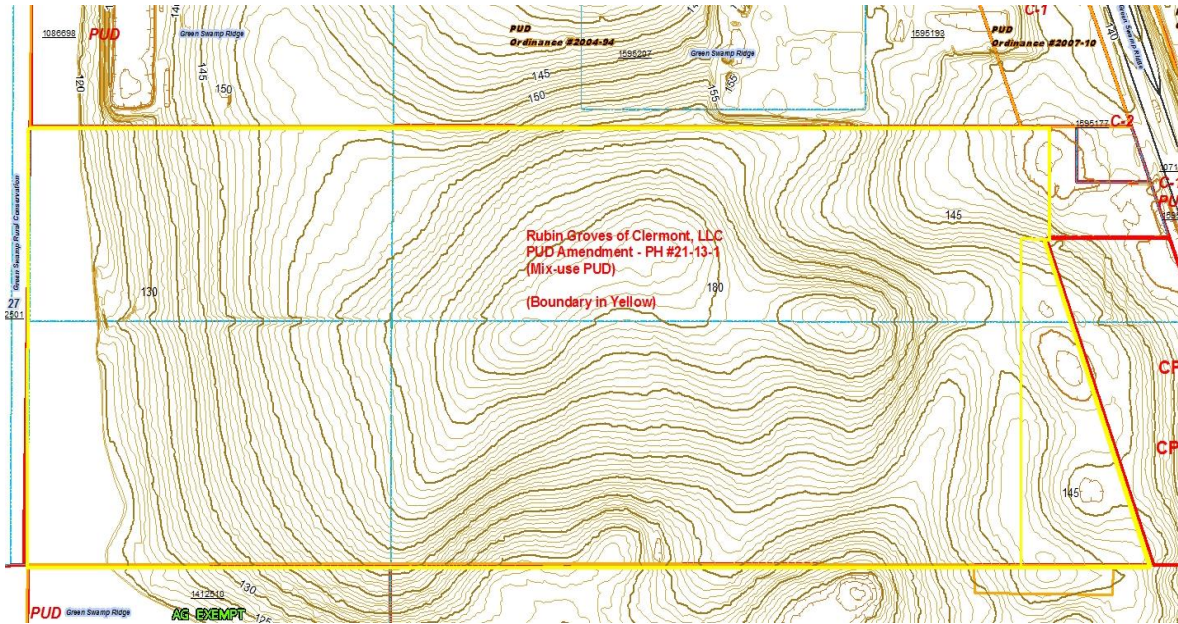
Specific development details regarding this project are discussed in Subsection “A” and “B” of this analysis.

- Standards of Review and Analysis - (Section 14.03.03, LDR)

A. Whether the proposed rezoning is in conflict with any applicable provisions of these Regulations;

Overburden Removal

The Applicant has indicated a desire to create a development community designed for the elderly and disabled. As demonstrated on the contour map below, there is a ridge through the center of the property with an elevation of approximately 180 feet above sea level near the center of the property to 130 feet at the west end and 140 feet at the east end. To accomplish this development, the Applicant proposes that “*mass grading*” of the site is necessary to reduce the elevation change so the topography of the development is near level with very little elevation change throughout the development.



The Applicant proposes the mass grading and removal of roughly 3.0 million cubic yards of material off site, and is requesting the proposed removal of the material be exempt from the requirements to obtain a mining conditional use permit and operating permit contained in LDR 6.06.00, under Subsection 6.06.01.F.2.a & b, which state the following:

- a. *Excess overburden generated as a result of the bona fide Construction may be removed offsite so long as the County Manager or designee is provided written notice during Construction approval or Building Permit application process and so long as the total amount of material removed offsite is not greater than two hundred (200) percent of the minimum stormwater retention/detention volume required.*
- b. *If the above criteria is exceeded or excavation is not storm water related, the County Manager or designee may give approval for removal of such excess Overburden if the applicant shows that removal of such excess Overburden is necessary for development of the Site due to physical factors of the Land or Permitting requirements from a governmental agency. In making this decision, the County Manager or designee shall consider the following factors:*
 - (1) *Unique physical characteristics and topography of the Land involved;*
 - (2) *Engineering and environmental factors requiring overburden removal;*
 - (3) *Whether excavation and removal of Overburden is necessary for access to the property;*
 - (4) *Permitting requirements of state, local and federal governmental agencies; or*
 - (5) *Such other matters that may be deemed appropriate by the County Manager or designee.*

The 200% of stormwater volume is estimated at approximately 500,000 cubic yards of dirt for the project. The estimated amount of overburden removal proposed under the mass grading is estimated at approximately 3,000,000 cubic yards of dirt (5 times the amount permitted under the exemption from mining stated above). For comparison purposes, the recently approved Professional Dirt Services Mine is roughly 10 acres and expects to remove 300,000-350,000 cubic yards of fill. The exemption provided for the removal of 200% of the overburden is limited for the

purposes of Stormwater Retention only.

The LDR defines a mine as follows: ***Mine.*** *An area of Land on which Mining Activities have been conducted, are being conducted or are planned to be conducted as consistent with Chapter 6.06.* The LDR defines mining activities as: ***Mining Activities.*** *The extraction of minerals, Ore or other naturally occurring materials from the earth by whatever method, including borrow pits and the Removal of Overburden for the purpose of extracting and removing from the Site such underlying deposits and all associated Clearing, grading, Construction, processing, transportation and Reclamation on the Mine property, and includes the term pre-mining activities and Lake Creation but Shall not be deemed to include activities associated with Site surveying, environmental monitoring, mineral exploration or the sinking or operation of test wells and similar activities.* Based on these definitions and the magnitude of the proposed excavation, the requested overburden removal clearly constitutes mining and is subject to the mining regulations contained in LDR Section 6.06.00 and the prohibition of mining within the Ridge Future Land Use Category.

Mass Grading

The Applicant is requesting to “mass grade” the site to remove 3.0 million cubic yards of material to reduce the elevation from approximately 183 feet to approximately 147 feet. This is an elevation change of as much as 36 feet over most of the property which is inconsistent with the grading regulations contained in LDR Section 9.07.14.A.3, which state, *“Elevation changes in topography shall not exceed a maximum of ten (10) feet except for the footprint of the structure”* and is contrary to the intent of the lot grading requirements, which are intended to prevent adverse effects to surrounding or downstream wetlands, floodplains or neighboring property, inhibit soil erosion, and preserve scenic vistas and hills. In addition, the LDR provision prohibiting dramatic changes in elevation as a result of lot grading coincides with Comprehensive Plan Policy I-7.4.4 *Protection of Rural Viewscapes*, requiring the County to protect rural viewscapes within the Green Swamp Area of Critical State Concern by protecting natural topography. This is discussed in detail within Section B of this report.

Green Swamp Principles for Guiding Development

The proposed mass grading and overburden removal raises several concerns related to inconsistencies with the Green Swamp Principles for Guiding Development contained in LDR Section 8.00.05.A.1-11, specifically items 1, 2, 7, and 10:

- *(1) Minimize the adverse impacts of Development on resources of the Floridian Aquifer, Wetlands and Stormwater-Detention areas;*
- *(2) Protect the normal quantity, quality and flow of ground water and Surface Water which are necessary for the protection of resources of state and regional concern; . . .*
- *(7) Protect or improve existing ground and Surface Water Quality; . . . [and]*
- *(10) Protect the Natural Flow Regime of Drainage Basins.*

The proposed removal of a greater portion of the sand dune ridge through the middle of the property poses substantial alterations to the normal flow and natural flow regime of the drainage basin and will inhibit the natural infiltration of recharge over a large area of the on-site upper surficial aquifer, a major recharge area within the GSACSC. This sand dune ridge provides natural infiltration and filtering of pollutants for the surficial and Floridan Aquifer. Approval to remove approximately 40 feet of these sands and soils will leave approximately 10 feet of overburden between the grade and water table, substantially reducing the filtration capability for groundwater within this area.

The existing zoning district (mixed use PUD) is permitted consistent with Table 3.00.03, Land Development Regulations (LDR), Land Use – Zoning District Matrix, and Policy I-4.2.2, Lake County Comprehensive Plan, which permits PUD zoning in the Green Swamp Ridge FLUC. The request to amend the PUD to be exempt from mining requirements and be permitted to mass grade the site and remove greater than 200% of the stormwater volume excess overburden from the site is inconsistent with the LDRs as previously stated.

B. Whether the proposed rezoning is consistent with all elements of the Lake County Comprehensive Plan (“the Plan”);

The 131.82 +/- acre property is located within the Green Swamp Ridge FLUC on the Future Land Use Map. Approximately 9.14 acres of wetlands exist on the subject property, resulting in 122.68 net buildable acres. Potential development within this FLUC must comply with the established development standards as outlined in *Policy I-4.2.2* of the Comprehensive Plan (Plan). These development standards address density, intensity, open space, impervious surface ratio (ISR), floor area ratio (FAR), building square footage, and building height.

An agriculture buffer 50-foot wide is required along the western property boundary pursuant to Comprehensive Plan Policy I-7.7.5. This is less than the 200 foot buffer required for mines adjacent to churches, schools, parks, hospitals, residentially zoned property and property used for public purposes, and the 100 foot buffer from all other property lines that is required for a mine. The proposed ordinance contains provisions for this buffer and language for the continuation of agriculture uses to coincide with development build-out.

Additionally, the proposed ordinance contains a condition for the expiration of the PUD rezoning after three (3) years of approval should the development fail to commence construction within that period pursuant to Comprehensive Plan Policy I-7.8.2. Included with these conditions are requirements for meeting all applicable mining submittal requirements with deadlines for submitting applications, commencement of site work, completion of the mass grading, and reclamation of the site. These conditions have been established to avoid potential adverse impacts, such as soil erosion, uncontrolled stormwater run-off, and the degradation of the natural viewsapes and vistas in the area should the mass grading of the site not be completed in a timely manner, if the mass grading request is approved.

Mass Grading / Overburden Removal

The proposed removal of 3.0 million cubic yards of material and reduction of the elevation by roughly 36 feet raises several concerns related to inconsistencies with the Green Swamp Principles for Guiding Development contained in Comprehensive Plan Policy I-4.1.4. The proposed removal of a greater portion of the sand dune ridge through the middle of the property poses substantial alterations to the normal flow and natural flow regime of the drainage basin and will inhibit the natural infiltration of recharge over a large area of the on-site upper surficial aquifer, a major recharge area within the GSACSC. This sand dune ridge provides natural infiltration and filtering of pollutants for the surficial and Floridan Aquifer. Approval to remove approximately 40 feet of these sands and soils will leave approximately 10 feet of overburden between the grade and water table, substantially reducing the filtration capability for groundwater within this area. As determined in Section “A” above, the magnitude of the overburden removal constitutes mining under the definitions contained in the LDR and is further supported by the definitions contained in the Comprehensive Plan. Mining is defined as, *“Mining, An area of Land on which Mining Activities have been conducted, are being conducted or are planned to be conducted.” “Mining Activities, The mining of minerals, ore or other naturally occurring materials from the earth by whatever method, including the removal of overburden for the purpose of extracting and removing from the*

site such underlying deposits and all associated clearing, grading, construction, processing, transportation and reclamation on the property, and includes the term pre-mining activities and lake creation but shall not be deemed to include activities associated with site surveying, environmental monitoring, mineral exploration or the sinking or operation of test wells and similar activities.” With the removal of 5 times the 200% stormwater volume the request is determined to meet these definitions and as such is recognized as mining, which is not a permitted or conditional use within the Green Swamp Ridge FLUC in accordance with Comprehensive Plan Policy I-4.2.2, thus being inconsistent with this policy.

In addition, Policy I-7.4.4 *Protection of Rural Viewscapes*, requires the County to protect forested areas, native vegetation, and natural topography within the Rural Future Land Use Series, Wekiva River Protection Area and Green Swamp Area of Critical State Concern in order to maintain and protect the integrity of natural vistas and scenic viewscapes. The County shall enforce such regulations to the extent feasible, recognizing the rights of bona fide agricultural activities established in statute. The mass grading of the site and removal of 3.0 million cubic yards of material is in direct conflict with the protection of natural topography within the Green Swamp Area of Critical State Concern.

C. Whether, and the extent to which, the proposed rezoning is inconsistent with existing and proposed land uses;

The request for overburden removal is inconsistent with the existing land uses of the surrounding area. The land uses within the immediate area consist of general and convenience retail, restaurants, auto repair facilities, together with single and multi-family residential uses ranging from seventeen (17) dwelling units (DU) to the net acre on the south side, six (6) DU to the gross acres on the east side, three (3) DU to the gross acre on the north side, and undeveloped on the west side (Green Swamp Rural Conservation FLUC/1 DU to 10 net acres). The proposed removal of 3.0 million cubic yards of material without the protections afforded to mines in other areas of the county so close to urban development will cause impacts. These impacts include but are not limited to dust, noise, vibration, truck traffic as well as aesthetic impacts unsuitable for an urbanized area. The minimum setbacks between mines and residential zoning districts are 200 feet. If the Board approves the Mass Grading of the site, the Mass Grading would be exempt from the 200-foot setback since this would be approved as intensive grading rather than as a mine, and the proposed use of the site would not be required to go back through the Public Hearing process for approval of a Mining Conditional Use Permit.

D. Whether there have been changed conditions that require a rezoning;

There have been six (6) rezoning cases in this area over the past 6-years related to PUDs. The Applicant seeks a determination by the Board that the removal of excess overburden (greater than 200% of the stormwater volume) is not mining but necessary to accommodate the Applicant's desire to move forward with the development as a Mixed-Use PUD community for the elderly and disabled. As indicated above, the request is a mining operation and therefore is inconsistent with the Comprehensive Plan and LDRs for the reasons cited.

- E. **Whether, and the extent to which, the proposed rezoning would result in demands on public facilities, and whether, or to the extent to which, the proposed rezoning would exceed the capacity of such public facilities, including, but not limited to police, roads, sewage facilities, water supply, drainage, solid waste, parks and recreation, schools, and fire and emergency medical facilities;**

UTILITIES

Southlake Utilities has been identified as the probable utility service provider for the development central water and sewer. It will be necessary for the Applicant to obtain a Utility Service Agreement from Southlake Utilities and provide a copy of this agreement in conjunction with any development application approval. The ordinance requires connection to central utilities.

FIRE

Lake County Fire and Rescue Station (LCFR #112) is located at the intersection of CR 474 and US Hwy 27 area approximately 0.5 mile from the property. LCFR #112 is manned 24/7 with an approximate response time of 3 to 5 minutes providing fire protection and advanced life support for this area.

SOLID WASTE

The Lake County Solid Waste Division has indicated that adequate capacity is available to address the solid waste needs of the project. The ordinance has been conditioned to require sufficiently designed access ways to accommodate solid waste collection vehicles.

PARKS

The Applicant is providing 49.1 acres of common open space within the proposed development which may possibly be used for hiking trails, picnicking, and other passive recreational uses. Further evaluation of recreational needs will be considered during the development review process for a development application (site plan/preliminary plat/construction plans) submittal.

- F. **Whether, and the extent to which, the proposed rezoning would result in significant adverse impacts on the natural environment;**

The overburden removal will significantly alter the natural drainage pattern and flow regime for a large portion of the property and has the potential to impact a high quality wetland area to the west, inconsistent with the guiding principles for development within the GSACSC.

As previously stated, Policy I-7.4.4 *Protection of Rural Viewscapes* requires the County to protect forested areas, native vegetation, and natural topography within the Rural Future Land Use Series, Wekiva River Protection Area and Green Swamp Area of Critical State Concern in order to maintain and protect the integrity of natural vistas and scenic viewscapes. The County shall enforce such regulations to the extent feasible, recognizing the rights of bona fide agricultural activities established in statute. The mass grading of the site and removal of 3.0 million cubic yards of material is in direct conflict with the protection of natural topography within the Green Swamp Area of Critical State Concern by almost leveling the site and removing any natural vistas.

The property is in an area that has the potential to contain sand skinks and gopher tortoises. A detailed Environmental Assessment, no older than 6-months and addressing flora, fauna, and natural habitat, will be required prior to any development application approval. The submittal of an

Environmental Assessment will be a condition in the attached ordinance. Wetlands on the site will be required to be placed in a conservation easement and will be required to have a fifty (50)-foot wetland buffer. These requirements will be addressed in detail during the development review process if this rezoning is approved.

G. Whether, and the extent to which, the proposed rezoning would adversely affect the property values in the area;

No evidence has been presented that would indicate the proposed rezoning would adversely affect the property values in the area.

H. Whether, and the extent to which, the proposed rezoning would result in an orderly and logical development pattern, specifically identifying any negative effects on such patterns;

The development pattern for the area surrounding the property is predominately commercial development along US Hwy 27. A mix of residential types (Single-Family and Multi-Family) together with assorted commercial uses (general and convenience retail, general and fast food restaurants, auto repair, and medical services) are situated west of the highway. The Comprehensive Plan has designated this area as the Green Swamp Ridge FLUC to promote a balanced mix of land uses. While the proposed actual use of the property (mixed-use development PUD community for the elderly and disabled) is consistent with the Green Swamp Ridge FLUC and would result in an orderly and logical development pattern, the proposed mass grading of the property in preparation for the development is inconsistent with the Green Swamp Ridge FLUC and would disrupt the orderly and logical development pattern, as it would be a mining use not designed in accordance with the limitations and requirements ordinarily placed on those uses by the LDR, which are intended to protect surrounding land uses from the mine's potential off-site impacts.

I. Whether the proposed rezoning would be in conflict with the public interest, and in harmony with the purpose and intent of these Regulations;

With the exception of the removal of 3.0 million cubic yards of fill from the property, the proposed rezoning is in harmony with the general intent of the Lake County Comprehensive Plan and Land Development Regulations.

J. Any other matters that may be deemed appropriate by the Lake County Planning and Zoning Board or the Board of County Commissioners, in review and consideration of the proposed rezoning.

The Department of Economic Opportunity (DEO) Area of Critical State Concern Division formerly known as The Department of Community Affairs (DCA) provided a letter dated October 31, 2013, and supplemental information in an e-mail dated December 20, 2013, indicating that it had serious concerns regarding the request to mass grade and remove the overburden from the site on the basis of the Stormwater exemption and that it was inconsistent with the Comprehensive Plan and LDRs. A copy of this letter and the e-mail are attached as backup data to this report.

Please note the findings of fact listed below have been re-arranged numerically, but the content of each finding remains the same as presented to the Planning and Zoning Board.

FINDINGS OF FACT: Staff has reviewed the application for this rezoning request and found:

1. Based on the definition of “Mining” and “Mining Activities” contained in the Comprehensive Plan, the amendment request related to the removal of excess overburden (greater than 200% of the stormwater volume) is determined to be mining and mining activity.
2. The amendment request related to the removal of excess overburden (greater than 200% of the stormwater volume) is inconsistent with Comprehensive Plan *Policy I-4.2.2, Green Swamp Ridge Future Land Use Category* as mining is not a permitted or conditional use within the Green Swamp Ridge Future Land Use Category.
3. The amendment request related to the removal of excess overburden (greater than 200% of the stormwater volume) is inconsistent with Comprehensive Plan *Policy I-7.4.4 Protection of Rural Viewscapes*, by failing to protect the natural topography within the Green Swamp Area of Critical State Concern.
4. The amendment request related to the removal of excess overburden (greater than 200% of the stormwater volume) is inconsistent with Comprehensive Plan *Policy I-4.1.4*, by failing to minimize the adverse impacts of development on resources of the Floridian Aquifer, wetlands and stormwater-detention areas, failing to protect the normal quantity, quality and flow of ground and surface water, failing to protect or improve existing ground and surface water quality, and failing to protect the natural flow regime of the drainage basin.
5. Based on the definition of “Mining” and “Mining Activities” contained in the Land Development Regulations, Chapter 2, the amendment request related to the removal of excess overburden (greater than 200% of the stormwater volume) is determined to be mining and mining activity.
6. The amendment request related to the removal of excess overburden (greater than 200% of the stormwater volume) is inconsistent with the Green Swamp Principles for Guiding Development contained in Land Development Regulations, Section 8.00.05.A.1-11, by failing to minimize the adverse impacts of development on resources of the Floridian Aquifer, wetlands and stormwater-detention areas, failing to protect the normal quantity, quality and flow of ground and surface water, failing to protect or improve existing ground and surface water quality, and failing to protect the natural flow regime of the drainage basin.
7. The amendment request related to the removal of excess overburden (greater than 200% of the stormwater volume) is inconsistent with the grading regulations contained in LDR Section 9.07.14.A.3, as the proposed elevation change of 36 feet exceeds the 10-foot limitation.

Based on these findings of fact, staff recommends **Denial** for the amendment request related to the removal of excess overburden (greater than 200% of the stormwater volume).

WRITTEN COMMENTS FILED:

Support: -0-

Concern: -1-

Opposition: -0-