

**LAKE COUNTY PLANNING AND COMMUNITY DESIGN ANALYSIS
COMPREHENSIVE PLAN AMENDMENT**

PLANNING AND ZONING BOARD		BOARD OF COUNTY COMMISSIONERS
April 3, 2013		Transmittal: April 23, 2013 Adoption: TBD

LPA#13/3/4-4 Tom West Borrow Pit Amendment (DEO #TBD)	Case Manager: Brian T. Sheahan, AICP Planning & Community Design Manager	Agenda Item # 9
Property-specific policy text amendment to allow exemptions from open space, environmental and tree preservation requirements, with conditions, borrow pit on property within the Wekiva River Protection Area/Wekiva Study Area		

Owner: Tom West, Inc.

Applicant: Anita Geraci-Carver, Esq.

Type: Comprehensive Plan Text Amendment

Creation or Revision: Creation

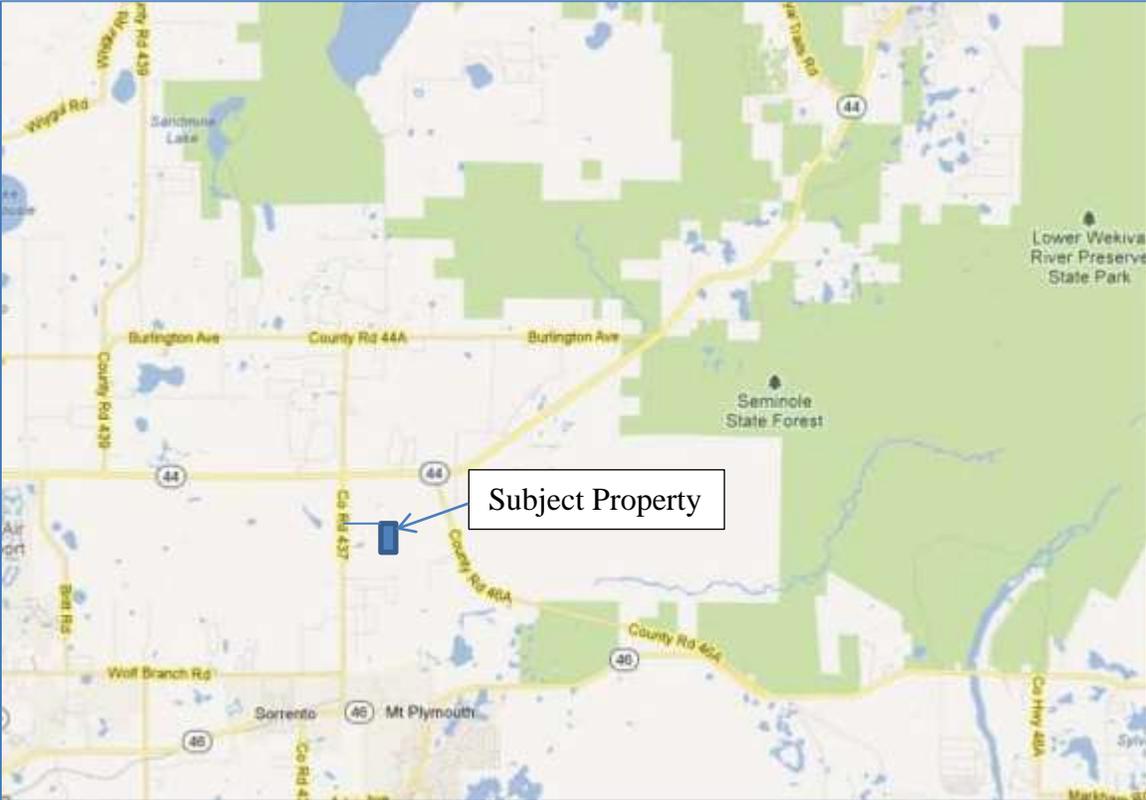
Description: Text Amendment. This request amends the Future Land Use Element of the 2030 Comprehensive Plan, allowing exemptions from open space, environmental and tree preservation requirements for borrow pit on property located within the A-1-20 Receiving Area within the Wekiva River Protection Area (WRPA) and the Wekiva Study Area (WSA), with conditions.

- Summary of Recommendation -

Staff recommends **DENIAL** of the request to amend the 2030 Comprehensive Plan Future Land Use Element to allow a borrow pit use and exemptions from open space, environmental and tree preservation requirements, with conditions, by site-specific policy.

Planning & Zoning Board Recommendation: TBD

LOCATION: The parcels are located east of CR 437 and south of SR 44, at the east end of Walkabout Ranch Road, comprising roughly 83 acres, in Section 17 Township 19 South Range 28 East, Lake County, Florida.



- Summary -

Analysis: Borrow pits may be allowed within the Wekiva River Protection Area (WRPA) pursuant to Comprehensive Plan Policy I-3.3.20 (“Mining and Borrow Activities within the Wekiva River Protection Area”) and Policy III-3.5.2 (“Prohibitions on Mining in Environmentally Sensitive Areas”), if approved by the Board of County Commissioners (BCC) as a conditional use and limited for public works projects within the WRPA pursuant to Policy 1-3.3.20. In April 2012, the Applicant submitted a presubmittal application for a borrow pit use on the subject property. In the comments provided to the applicant, they were informed of the criteria to develop the property for the borrow pit use, including a requirement to provide open space consistent with the WRPA A-1-20 Receiving Area as a condition of development. Additional development issues were discussed in the correspondence and subsequent meetings with the Applicant, relating to environmental requirements, transportation impacts, and compatibility with neighboring uses which include three nearby residential subdivisions. The Applicant has indicated that they feel the need for fill material for public works projects within the WRPA is so great that it should be exempted from these requirements. To overcome these requirements, the Applicant originally proposed a policy change that would have eliminated the open space and environmental protection requirements for any Borrow Pit use within the Wekiva Study Area and Wekiva River Protection Area. During the comment period, the Applicant narrowed their request to a site-specific policy, limiting the requested exemptions to their 83 acre property, as follows:

Proposed Policy I-1.6.10 Specific Exemptions on the Tom West Property

In order to provide needed fill material for the construction of or improvement to highways or other public work projects within the Wekiva River Protection Area, including the Wekiva Parkway (SR 429) and SR 46 Projects, as demonstrated by data and analysis the following shall apply to the three (3) stated parcels, totaling 83 +/- acres, more particularly described as Parcel Nos. 07-19-28-000400000801 (Alt. Key 2731761), 17-19-28-000200000700 (Alt. Key 1597030) and 17-19-28-000200000800 (Alt. Key 1597048) and further described as Parcel 1 – the SW ¼ of the NW ¼ of Section 17, Township 19 South, Range 28 East, Parcel 2 – the NW ¼ of the NW ¼ and the West 90 feet of the NE ¼ of the NW ¼ of Section 17, Township 19 South, Range 28 East, and Parcel 3 – Begin at the intersection of the Easterly right-of-way of Hwy No. 437 and the South line of Section 7; run thence N 89°26'33" E along the South line of the SE ¼ of Section 7 a distance of 2508.52 ft., more or less, to a 6" concrete monument at the SE corner of Section 7; thence continue N 89°26'33" E along the South line to Section 8 a distance of 70.0 ft.; thence N 0°33'27" W, 70.0 ft.; thence S 89°26'33" W parallel with the South line of Section 7 a distance of 2577.21 ft. to the Easterly r/w of Hwy. No. 437; thence S 0°30'53" W along said Easterly r/w of Hwy No. 437 a distance of 70.0 ft. to the P.O.B. (the "Parcels").

Notwithstanding any policy herein, the Parcels shall be exempt from open space, environmental and tree preservation requirements for a borrow pit use, if such use is permitted through a mining conditional use approval subject to the following:

1. Any mining use shall not exceed a term of 10 years and be reclaimed within such time.
2. Upon completion of any mining use the Parcels shall be returned to agricultural use for a period not less than 3 years upon completion of final reclamation.
3. A percentage of the upland shall be designated as open space and placed within a conservation easement prior to any development excepting any mining use. The percentage shall be determined at the time of development in accordance with the Lake County comprehensive plan, code and land development regulations.
4. Mining use shall be limited to dry burrow pit.

The Future Land Use Map shall contain a note stating this limitation.

This proposed policy would amend the 2030 Comprehensive Plan to adopt *a site-specific policy* to exempt the subject property from open space, environmental and tree preservation requirements and allow the proposed borrow pit to proceed through the mining site plan/conditional use process. The Applicant has stipulated that the materials obtained from the property will be used for the construction of the Wekiva Parkway and thereby meet this requirement.

The property and use are subject to policies contained within Objective I-3.3, "Wekiva River Protection Area", and Objective I-3.4, "Wekiva Study Area". The proposal to exempt the project from open space, environmental and tree preservation requirements is inconsistent with several of these policies and results in conflicts with other policies adopted to limit the impacts of development within environmentally sensitive areas. The Applicant asserts that the amendment is necessary for the construction of public works projects within the Wekiva River Protection Area and it is therefore necessary to decrease buffers, reduce tree and species protections in the Comprehensive Plan, and exempt the project from policies that would limit the borrow pit to 50% of the property.

A detailed analysis of the request's consistency with the 2030 Comprehensive Plan is provided below.

- Standards for Review –

A. Whether the proposed amendment is consistent with all elements of the Comprehensive Plan.

The proposed amendment would be inconsistent with the certain policies of the Comprehensive Plan; however, approval of the proposed amendment would eliminate these inconsistencies for this specific project on the subject property. The proposed amendment would grant an exemption to the Applicant not available to other similarly situated property owners. There has been no hardship or unique circumstance demonstrated by the Applicant that indicates the proposed amendment is necessary to meet a quantifiable need. The specific issues and responses to the inconsistencies with the Comprehensive Plan are summarized below. A response was submitted by the Applicant and is attached.

Policy 1-3.3.17 Preservation of Natural Habitats within the Wekiva River Protection Area. This policy requires the County to preserve natural habitats essential to any animals or plants designated as endangered, threatened, or species of special concern pursuant to the Florida Administrative Code and the Florida Statutes, particularly as they apply to the Wekiva River Protection Area. Such preservation is intended to ensure sufficient habitat to maintain viable populations of listed species. Based on a species survey submitted by the Applicant, the only listed species that will be impacted will be Gopher tortoises, which number approximately 151. Permitting, relocation and preservation of these animals would be required during the site plan process if the project were to be allowed. The Applicant has indicated that these animals could be relocated into a 50-foot buffer. It must be noted that this may not be feasible or consistent with state requirements as the area may be too narrow to remain viable habitat and is very unlikely that the buffers would be permitted to be used for onsite relocation by the Florida Fish & Wildlife Commission (FWCC) to their narrow configuration. Further, by concentrating the animals in such a narrow areas (called edge effect by biologists) it decreases their potential to survive.¹ The Applicant has indicated that the property will be reestablished with a more appropriate ground cover and diverse habitat to feed animals and birds than currently exists when reclamation of the mining use is completed. It must also be noted that buffers for mining uses are required to be a minimum of 100 feet by Section 6.06.02 C.1.a. of the Land Development Regulations, unless specifically reduced by the Board of County Commissioners. It is unknown whether the Applicant will be able to provide sufficient evidence to the BCC to warrant a 50% reduction in the required buffer.

Policy 1-3.3.18 Preservation of Native Vegetation within the Wekiva River Protection Area This policy requires that native vegetation within the Wekiva River Protection Area be preserved to the greatest extent possible. The policy requires that clearing of native vegetation be limited to only those areas approved in accordance with a vegetation survey and protection plan submitted to and approved by Lake County, with the exception of those areas devoted to bona fide agricultural uses as specified and those activities necessary for normal yard maintenance. Agricultural uses enjoy special exceptions in both statute and the comprehensive plan. The Applicant has indicated the property is free from native vegetation. However, a site visit on October 1, 2012 determined that the site does have significant amount of native trees such as Laurel Oak, Live Oak, and others but none are predominant. There was also a significant amount of invasive exotic vegetation as well,

¹ Cox, James et al., Closing the Gaps in Florida's Wildlife Habitat Conservation System, Florida Game & Fresh Water Fish Commission (now FWCC), 1994.

such as Chinaberry. The property has been utilized in the past for citrus crops and is currently used as grazing land for cattle. The Applicant has indicated that the property is currently utilized for agricultural purposes, and that accordingly, even without the requested amendment, the subject property could be cleared of any native vegetation, if any existed, as part of the agricultural use.

Policy 1-3.3.20 Mining and Borrow Activities within the Wekiva River Protection Area allows The site is located within the Wekiva River Protection Area (WRPA) and the Wekiva Study Area (WSA). As discussed above, borrow activities may be allowed in the WRPA with approval by the Board of County Commissioners with a Mining Site Plan/Conditional Use Permit. The policy limits borrow activities to those necessary for the construction of, or improvement to, highways or other public works projects within the Wekiva River Protection Area. The Applicant has indicated that they would comply with this limitation.

Policy I-3.4.2 Open Space Requirements within the Wekiva Study Area (WSA)

The policy requires that development within the WSA provide a minimum amount of open space in order to protect natural resources such as aquifer recharge, native vegetation, habitat, and wildlife. The policy requires that new development within the WSA preserve and dedicate open space. This policy was adopted for consistency with 369.321(3) F.S. upon which Policy 1-3.4.2 is based. This statute requires, in part, that “Local governments shall amend their comprehensive plans to establish land use strategies that optimize open space and promote a pattern of development on a jurisdiction-wide basis that protects the most effective recharge areas, karst features, and sensitive natural habitats including Longleaf Pine, Sand Hill, Sand Pine, and Xeric Oak Scrub. Such strategies shall recognize property rights and the varying circumstances within the Wekiva Study Area, including rural and urban land use patterns.” The Applicant has indicated that no sensitive habitat exists on the subject property and this has been confirmed through site visits. The Applicant has also submitted an engineering report that indicates no karst features are located on the property. However, the intent of the policy is also to protect aquifer recharge, native vegetation (not only sensitive habitats) and wildlife. The request to eliminate open space on the subject property is inconsistent with this intent.

The Applicant responded to this inconsistency by stating that the request would be limited to subject property to:

“... meet the specific needs of construction of, or improvement to, highways or other public works projects within the Wekiva River Protection Area, including the Wekiva Parkway (SR 429) and SR 46 Projects. A 50’ perimeter buffer will provide sufficient habitat for a viable gopher tortoise population. The revised proposed amendment provides an exemption for this property only, and not a blanket exemption for borrow pits. The benefits of any borrow mining project on this property to further the objectives of the Wekiva Parkway (SR 429) and SR 46 Projects substantially outweighs any optimization of open space. The project will have a 50’ perimeter buffer which will provide the same benefits as dedicated open space.”

Policy I-3.4.5 Development Design Standards (within the WSA) and Policy IX-1.3.6 Land Development Regulations.

Policy I-3.4.5 and Policy IX-1.3.6 require new development within the WSA to implement conservation design standards, including “[c]lustering of development to create large contiguous tracts of common open space; to protect environmentally sensitive areas, including but not limited

to habitat, wildlife, and wildlife corridors....” The Applicant indicates that perimeter buffering around the proposed borrow pit would be provided to meet the intent of this requirement. The Applicant asserts that a 50-foot perimeter buffer would provide habitat and serve as the required open space needed for wildlife and wildlife corridors, and to maximize buffering to adjacent properties. The Applicant has also indicated that the perimeter buffering will provide sufficient habitat for gopher tortoises remaining on the property as they are the only protected fauna existing on the property. It must be noted that it is well documented that clustering of open space has been shown to be more conducive to providing viable habitat than small patched or narrow corridors (perimeter buffers not contiguous with larger patches).

This policy was drafted to meet the Wekiva Guidelines distributed by the state in 20052. The guidelines were distributed as a guide for local government in drafting policies to comply with the Wekiva Parkway Protection Act. The major theme in the guidelines in the requirement that open space be optimized by giving priority to

“... resources required to be protected by the Act, including most effective recharge areas, karst features, and sensitive natural habitats, such as, long leaf pine, sand hill, xeric oak scrub, and sand pine scrub vegetative communities. Additionally, local governments should establish targets, for instance ranging from 50% to 80% open space in association with clustered development, to maximize the amount of land to be protected as open space. The more sensitive the resources within the local jurisdiction, the greater the open space standards should be in combination with land use strategies to protect resources.”

Although sensitive natural habitat does not exist on the subject property, even the minimum open space would not be provided based on the proposed policy. The Applicant has indicated that since only gopher tortoises exist on site, those located within the 50’ buffer will remain on the property and that the 50’ buffer will be adequate to provide buffering from neighboring properties. The Applicant states that “aside from the 50’ perimeter buffer that will not be disturbed, there are limited resources requiring protection in open space and that additional open space - in compliance with the current requirements - would be provided by future development.”

As proposed, if the BCC were to allow a 50-foot buffer through the conditional use permit, roughly 6% (about 4.5 acres) of the property would remain undisturbed and vegetated. The Applicant asserts that the proposed exemption, for a borrow pit on the subject property, should be exempted from the requirements because there “are other properties within the Wekiva River Protection Area with more sensitive resources than this property. For the reasons stated above, the use of the property as a borrow pit on the applicant’s property without setting aside open space still meets the intent of the policy” and that “.... in the event the property supplies fill for construction of or improvement to highways or other public works projects within the Wekiva River Protection Area, the benefit to the public greatly outweighs requiring a minimum open space.”

Policy III-2.3.12 Regulate Land Use Activities requires that the County adopt Land Development Regulations to regulate land use activities that have potential to adversely impact springsheds. The

2 FDCA DCO, Guidelines for Preparing Comprehensive Plan Amendments for the Wekiva Study Area Pursuant to the Wekiva Parkway & Protection Act, March 2005.

<http://www.floridajobs.org/fdcp/dcp/WekivaParkway/Files/WekivaGuidelines.pdf>

policy indicates that “the County shall prohibit inappropriate land uses from being located in karst areas with an aquifer connection, springshed protection zones, protected recharge areas and most effective recharge areas, unless impacts can be mitigated.” It specifically identifies mining as an inappropriate land use. The policy states that the County shall require the use of Best Management Practices and performance standards *to maximize open space and promote protection of natural vegetation* to protect water quality. The Applicant has stated that mining activities do not impact the recharge capabilities of the property and that there are no Karst features or native vegetation to protect on the subject property. The Applicant states that after reclamation “a more appropriate ground cover and diverse habitat than currently exists which will also provide stability and prevent erosion ...and that all activities having any potential to adversely impact springsheds are being addressed and impacts mitigated.”

Policy III-3.2.5 Native Vegetation, Habitat, and Wildlife within Development Projects requires that vegetative communities and wildlife habitats be protected from adverse effects associated with development. The policy provides that the Land Development Regulations shall require development to preserve wetlands and portions of developable uplands containing designated species or rare upland habitats. Sites containing Gopher tortoises and other designated species are required to preserve up to 50% of the trees onsite by this policy. Pursuant to Policy III-3.2.5, special consideration shall be given to designated species (Gopher tortoise and others) within Ecologically Significant Areas such as the Wekiva River Protection Area. The policy requires that this be achieved, in part, through the protection of wildlife habitat in open space on a development site.

The Applicant indicates that native vegetation is not present on the property; however, as previously stated, a site visit has confirmed the presence of a significant number of native trees on the property. The Applicant indicates that the trees located on the property are “non-preferred trees, and mature harvestable hardwoods” but would be preserved if within a 50’ perimeter buffer. The Applicant suggests that this would represent a significant amount of trees, but as previously indicated, the 50-foot perimeter buffer would only leave roughly 6% of the property undisturbed and not cleared. Based on aerial photos, the existing trees appear evenly dispersed throughout the southern parcel and the northeast portion of the northern parcel as seen in the below. It is unlikely a significant number of the existing native trees could be preserved.



The Applicant states that the property is currently being utilized for agricultural purposes and all the trees may be harvested without any development taking place and that by allowing mining activities on the property it will actually provide greater preservation of the existing, “non-preferred trees”. As indicated above roughly 94% of the property will be cleared to accommodate the proposed borrow pit, thus removing the majority of trees on the property. Further, as stated by the Applicant, once returned to agricultural use upon completion of the mining, any remaining trees could be removed, so the assertion that more protection of the existing trees would result by adoption of the proposed Comprehensive Plan amendment is not accurate.

Policy III-3.2.17 Wildlife Consideration within Development Projects provides for limits of the development area if the preservation of listed species is possible onsite. In areas of ecological significance, such as the Wekiva River Protection Area (WRPA), it must be demonstrated that:

- The developer/applicant must accomplish development in such a fashion as to avoid the habitat of the listed species; or
- If it is not possible to avoid the habitat of said species with the approved use, then an applicant would need to relocate the species on site to an equally suitable area consistent with guidelines published by the Florida Fish and Wildlife Conservation Commission; or
- If via site analysis, that development with the approved use cannot be accomplished through onsite relocation and that a conservation benefit can be achieved for the species and natural community through off-site relocation. Relocation must take place within the same area of ecological significance with the preference given to properties adjacent or close to the donor site. To the extent possible, commensal species shall also be relocated with the designated species.

The Applicant has provided a survey that identifies roughly 150 Gopher Tortoises on the subject property. The policy requires that these animals to be relocated as the Applicant acknowledges that insufficient habitat would exist on the property for the animals to remain onsite and indicates that they will be relocated to a site approved by the Florida Fish and Wildlife Conservation through a

Taking Permit as there are no receiving areas on adjacent properties or within the Wekiva River Protection Area or Wekiva Study Area. Therefore, the Comprehensive Plan amendment proposed by the Applicant is inconsistent with this policy.

B. Whether the proposed amendment is in conflict with any applicable provisions of these regulations.

The proposed borrow pit would require the approval of a Mining Site Plan/Conditional Use Permit. All the criteria for development would be specified at that time. Due to the direct relationship the proposed amendment would have, if approved, on the criteria, some provisions of the land development regulations would no longer apply, including the provision of open space and tree preservation/mitigation. The Applicant has also indicated they wish to reduce the standard 100-foot buffer with a perimeter buffer of 50 feet. This request is not included in the proposed amendment and would be evaluated once the mining site plan/conditional use (MSP/CUP) application is made. Due to the complex nature of mines, it is highly recommended that the Applicant submit the MSP/CUP prior to the adoption hearing for this amendment if transmittal of the amendment is approved.

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

The area is characterized by large lot residential, equestrian uses and agricultural uses. Therefore, the proposed borrow pit use would not be consistent with the neighboring uses. However, the proposed borrow pit could be made more consistent with the neighboring uses by providing buffers, limiting hours, and requiring a limited operation horizon to complete the mining and reclaim the property for agricultural uses.

D. Whether there have been changed conditions that justify an amendment.

The Applicant has indicated that the approval and future construction of the Wekiva Parkway will require fill material. It has not been demonstrated whether the fill material is available in a less environmentally sensitive area or whether additional sources will be necessary in addition to the subject property. No documentation has been provided to demonstrate that the Applicant will provide materials for the construction of this facility; however, conditions would be included in the future MSP/CUP to ensure the fill material would be limited to this purpose, should this amendment be approved.

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

The amendment would require the approval of a Mining Site Plan/Condition Use Permit (MSP/CUP) for the borrow pit use. Public facility impacts generated by this type of use are typically limited to transportation infrastructure. The Applicant has indicated the trucks transporting the fill material would use Walkabout Ranch Road and leave via CR437. As seen below, just south of the intersection of Walkabout Road and CR 437 is the entrance to Sorrento Hills Subdivision.



It is likely that any development of the property, such as for a borrow pit, would have to address the impact of increased truck traffic on these facilities. Such conditions would be placed on the development through the MSP/CUP and subsequent Operation Plan processes.

F. Whether, and the extent to which, the proposed amendment would result in significant impacts on the natural environment.

As stated above, anticipated impacts include impacts to listed species, protected trees and reduction of open space intended to protect the springsheds.

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

There is a potential for adverse impacts on the property values from the proposed use of the property as a borrow pit if impacts are not sufficiently mitigated.

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

The amendment seeks to allow the property to be used for agricultural purposes for three (3) years after completion of restoration. The Land Development Regulations allow the reestablishment of agricultural uses for 15 years if the use is abandoned. The Applicant believes three (3) years is a reasonable time frame to continue using the land for agricultural pursuits. The Applicant states that benefit to the public of fill for construction of, or improvement to, highways or other public works projects within the Wekiva River Protection Area, greatly outweighs requiring a lengthier time to use the property after restoration for agricultural purposes.

I. Whether the proposed amendment would be consistent with or advance the public interest, and in harmony with the purpose and interest of these regulations.

The Applicant states that benefit to the public of fill for construction of, or improvement to, highways or other public works projects within the Wekiva River Protection Area, greatly outweighs the County's interest in applying the above-mentioned Comprehensive Plan policies to the subject property if developed as a borrow pit use. However, the Lake County Comprehensive Plan does not prohibit the use of the property for a borrow pit; it simply places certain requirements on such uses in the interest of maintaining rural density and character, and protecting and preserving natural resources, native vegetation, and wildlife habitat within the Wekiva River Protection Area. The proposed Comprehensive Plan amendment would not be in harmony with the purpose and intent of the Lake County Comprehensive Plan. The Applicant has not demonstrated there is a need for new mines (dry borrow pit) to meet the needs of the Wekiva Parkway construction but the proposed policy and any future CUP would include a stipulation that material only be used for this purpose.

– Conclusions –

It has not been demonstrated that approval of a significant exemption to the Wekiva River Protection and Wekiva Study Area objectives and policies is necessary. No evidence has been provided demonstrating that there is additional need. If the amendment is approved for transmittal, the Applicant should submit a Mining Site Plan/Conditional Use Permit prior to final approval of the amendment. It is recommended that should the amendment be granted, the request be amended to require a minimum open space of 30% to be set aside for tree preservation and relocation of the gopher tortoises and other wildlife, and that this area be placed in a conservation easement to ensure its future viability.

ORDINANCE 2013 –
LPA#13/3/4-4
Tom West, Inc. Borrow Pit Text Amendment

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, FLORIDA, AMENDING THE LAKE COUNTY 2030 COMPREHENSIVE PLAN; AMENDING THE FUTURE LAND USE BY CREATING POLICY I-1.6.10 SPECIFIC EXEMPTIONS FOR THE TOM WEST PROPERTY PROVIDING EXEMPTIONS TO OPEN SPACE, PROVIDING FOR EXEMPTIONS TO ENVIRONMENTAL REQUIREMENTS AND TREE REMOVAL REQUIREMENTS FOR PROPERTY LOCATED IN SECTIONS 17 TOWNSHIP 19 SOUTH RANGE 28 EAST, LAKE COUNTY, FLORIDA, CONSISTING OF 3 PARCELS AND APPROXIMATELY 83 ACRES, ALL LYING AND BEING IN LAKE COUNTY, FLORIDA; PROVIDING FOR PUBLICATION AS REQUIRED BY SECTION 163.3184(11), FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 163, Florida Statutes, Part II, governs growth policy, county and municipal planning, and land development regulation in the State of Florida; and

WHEREAS, Chapter 125, Florida Statutes, Section 125.01(1)(g), authorized the Board of County Commissioners of Lake County to "Prepare and enforce comprehensive plans for the development of the county"; and

WHEREAS, pursuant to Chapters 163 and 125, Florida Statutes, on the 25th day of May, 2010, the Board of County Commissioners enacted Ordinance No. 2010-25, adopting the Lake County 2030 Comprehensive Plan; and

WHEREAS, on the 23rd day of July, 2010, the State of Florida Department of Community Affairs, now known as the Community Planning and Development Division of the Florida Department of Economic Opportunity, in its capacity as the State Land Planning Agency, published a Notice of Intent finding the Lake County 2030 Comprehensive Plan Amendment "In Compliance" with Chapter 163, Florida Statutes; and

WHEREAS, on the 22nd day of September, 2011, the Lake County 2030 Comprehensive Plan became effective; and

WHEREAS, Section 163.3184, Florida Statutes, sets forth the process for adoption of Comprehensive Plan Amendments; and

WHEREAS, on the 3rd day of April 2013, this Ordinance was heard at a public hearing before the Lake County Planning & Zoning Board in its capacity as the Local Planning Agency; and

WHEREAS, on the 23th day of April 2013, this Ordinance was heard at a public hearing before the Lake County Board of County Commissioners for transmittal to the Department of Economic Opportunity in its capacity as the State Land Planning Agency; and

WHEREAS, it serves the health, safety and general welfare of the residents of Lake County to adopt these amendments to the Lake County Comprehensive Plan;

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lake County,

1 Florida, that:

2 **Section 1. Comprehensive Plan Future Land Use Map Amendment.** The 2030 Future Land Use
3 Element is hereby amended to include the following policy:

4
5 **Policy I-1.6.10 Specific Exemptions for the Tom West, Inc. Property**

6
7 In order to provide needed fill material for the construction of or improvement to highways or other
8 public work projects within the Wekiva River Protection Area, including the Wekiva Parkway(SR 429) and SR 46
9 Projects, as demonstrated by data and analysis, the following shall apply to the following three parcels
10 (hereinafter, the "Parcels"), totaling 83 +/- acres, more particularly described as Parcel Nos. 07-19-28-
11 000400000801 (Alt. Key 2731761), 17-19-28-000200000700 (Alt. Key 1597030) and 17-19-28-000200000800
12 (Alt. Key 1597048) and further described as:

13
14 Parcel 1 – the SW ¼ of the NW ¼ of Section 17, Township 19 South, Range 28
15 East,

16
17 Parcel 2 – the NW ¼ of the NW ¼ and the West 90 feet of the NE ¼ of the NW ¼
18 of Section 17, Township 19 South, Range 28 East, and

19
20 Parcel 3 – Begin at the intersection of the Easterly right-of-way of Hwy No. 437
21 and the South line of Section 7; run thence N 89°26'33" E along the South line of
22 the SE ¼ of Section 7 a distance of 2508.52 ft., more or less, to a 6" concrete
23 monument at the SE corner of Section 7; thence continue N 89°26'33" E along
24 the South line to Section 8 a distance of 70.0 ft.; thence N 0°33'27" W, 70.0 ft.;
25 thence S 89°26'33"W parallel with the South line of Section 7 a distance of
26 2577.21 ft. to the Easterly r/w of Hwy. No. 437; thence S 0°30'53" W along said
27 Easterly r/w of Hwy No. 437 a distance of 70.0 ft. to the P.O.B.

28
29 Notwithstanding any policy herein, the Parcels shall be exempt from open space, environmental and
30 tree preservation requirements for a borrow pit use, if such use is permitted through a mining conditional
31 use approval, subject to the following:

- 32 1. Any mining use shall not exceed a term of 10 years and be reclaimed within such time.
- 33 2. Upon completion of any mining use the Parcels shall be returned to agricultural use for a
34 period not less than three (3) years upon completion of final reclamation. A percentage of the
35 upland shall be designated as open space and placed within a conservation easement prior to
36 any development excepting any mining use. The percentage shall be determined at the time
37 of development in accordance with the Lake County comprehensive plan, code and land
38 development regulations.
- 39 3. Mining use shall be limited to dry burrow pit.

40
41 The Future Lake Use Map shall contain a note stating this limitation.

42
43 **Section 2. Advertisement.** This Ordinance was advertised pursuant to Chapter 163, Florida
44 Statutes, Section 163.3184(11).

45 **Section 3. Severability.** If any section, sentence, clause, or phrase of this Ordinance is held to be
46 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way
47 affect the validity of the remaining portions of this Ordinance.

1
2 **Section 4. Effective Date.** This Ordinance shall become effective as provided for by law.

3
4 ENACTED this ____ day of _____, 2013.

5
6 FILED with the Secretary of State _____, 2013.

7
8 BOARD OF COUNTY COMMISSIONERS
9 LAKE COUNTY, FLORIDA

10
11 _____
12 Leslie Campione, Chairman
13 This ____ day of _____, 2013.

14
15 ATTEST:

16
17 _____
18 Neil Kelly, Clerk of the
19 Board of County Commissioners, Lake County, Florida

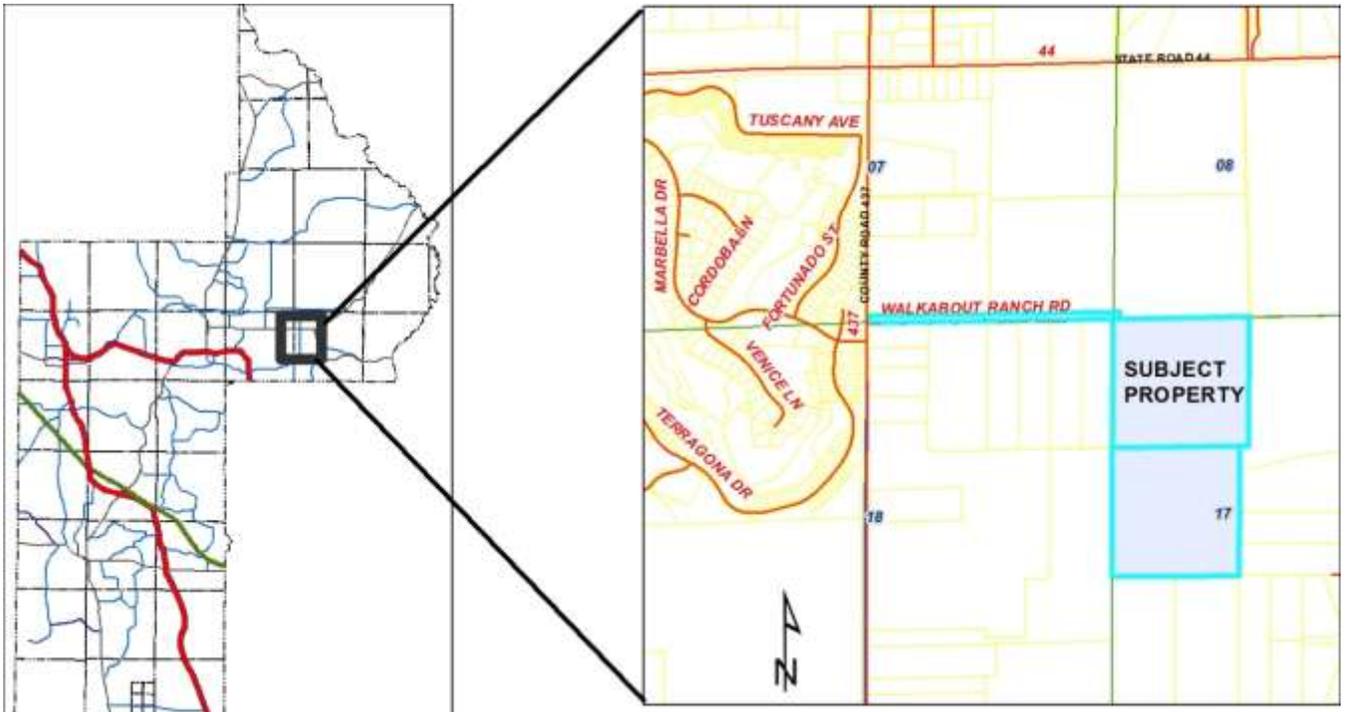
20
21 Approved as to form and legality:

22
23 _____
24 Sanford A. Minkoff
25 County Attorney

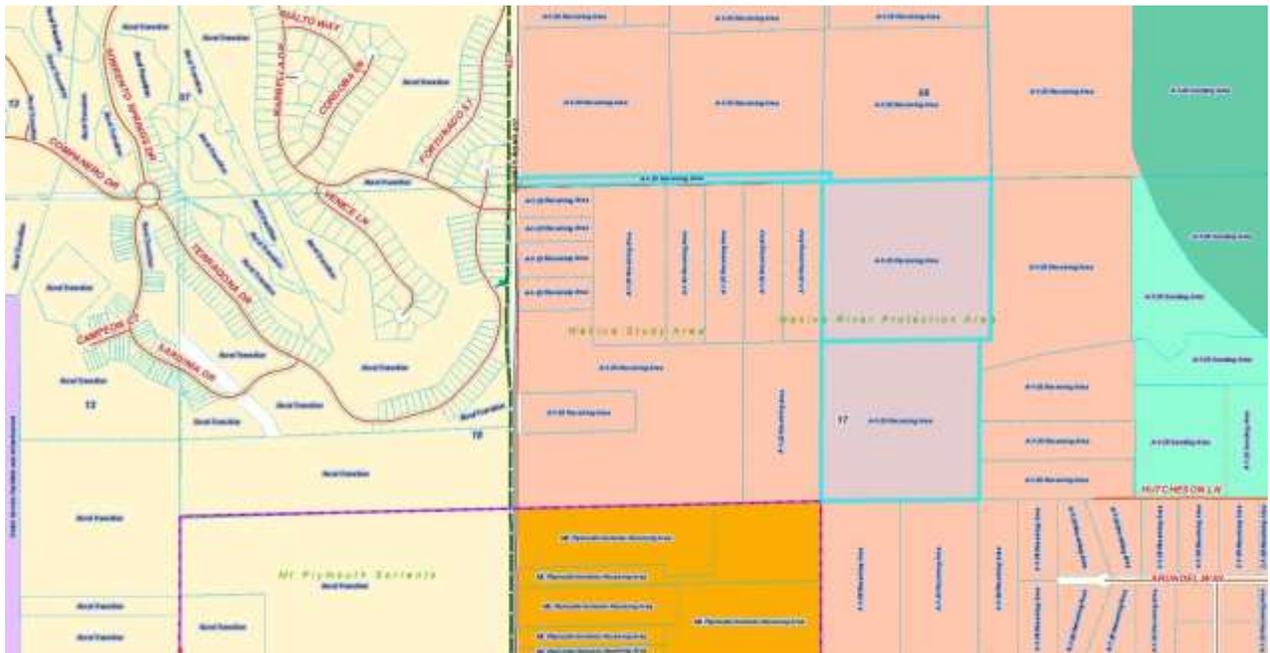
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ORDINANCE 2013 –
LPA#13/3/4-4
Tom West, Inc. Borrow Pit Text Amendment

EXHIBIT A



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10

**TOM WEST APPLICATION
JUSTIFICATION FOR AMENDMENT**

TEXT AND FUTURE LAND USE MAP AMENDMENTS

Describe the purpose and desired use of the amendment. Include a conceptual site plan depicting important features, including but not limited to, the location of major roads, structures, significant limitations (wetlands, karst features, steep slopes, etc.), environmentally sensitive areas and required open space.

Include a summary of the proposed amendment content and effect. Add additional pages, if needed.

Response: The Owner seeks a text amendment to Policy 1-3.4.2 entitled Open Space Requirements within the Wekiva Study Area (WSA) to relieve properties which seek to conduct borrow activities from dedicating open space in perpetuity if the property, after reclamation of the borrow pit activity is returned to an agricultural use, as defined by Section 570.02 F.S., for a period of no less than three (3) years.

Currently Policy 1-3.4.2 requires all new development, which includes borrow activities, within the WSA preserve to dedicate open space in perpetuity subject to certain requirements. As a result of this policy, a property owner who desires to obtain approval for a borrow pit on undeveloped property is required to set aside 50% of the property which cannot be utilized for any viable purpose even though the property's elevation is the only alteration to the property. This policy is beneficial when applied to development that includes constructing improvements on the property such as: constructing a residential subdivision, or building an office complex or retail store, because it ensures that at least 50% of the property will not be encumbered with structures, parking lots, and other impermeable improvements. However, it is a hindrance to property owners who desire to utilize their property for a borrow pit followed by an agricultural use because 50% of the property could not be used for even an agricultural use.

If the requested text amendment is adopted, the revised policy will not preclude imposing the open space requirement when the land is developed for any other purpose.

The Owner seeks this text amendment because it would like to operate a dry borrow pit on an 83 acre site located in the WSA: A-1-20 Sending Area. The subject property consists of three parcels generally located east of CR 437 in eastern Lake County. The materials from the borrow pit will only serve construction of the Wekiva Parkway consistent with Policy 1-3.3.20. Reclamation of the property will be in accordance with Chapter 6.06.00 of the Lake County Land Development Regulations. The reclamation is more particularly described in the Mining Site Plan Application prepared by Wicks Consulting Services, Inc. The property will then be used for agricultural purposes such as cattle grazing and hay production. If at some point, at least 3 years following reclamation of the property, the Owner wants to develop the property, the Owner will be required to apply to Lake County for approval and the 50% open space requirement will then apply to the property before it can be developed.

The proposed text amendment is as follows:

Policy 1-3.4.2 Open Space Requirements within the Wekiva Study Area (WSA)

In order to protect natural resources, including but not limited to aquifer recharge, karst features, native vegetation, habitat, and wildlife, the County shall require that new development within the WSA preserve and dedicate open space in perpetuity subject to the following requirements:

- Cluster of units shall be required, where the term clustering means that the built areas of the development site are well defined and compact, thereby enabling the creation of contiguous expanses of common open space and the protection of environmentally sensitive areas. Development shall be clustered away from the most environmentally sensitive areas on site and away from contiguous conservation land. Providing for environmental clustering, development shall also be clustered away from contiguous rural residential property of five (5) acres or greater. Open space created through clustering shall be connected to the greatest extent possible to adjacent open space areas and public conservation lands to create contiguous networks and corridors of larger open space.
- Within the WSA, minimum open space shall be provided consistent with the requirements of the applicable Future Land Use Category. Inside the WSA, any subdivision of land into ten (10) or more lots with the Rural Future Land Use Category, and resulting in an allowable density greater than one (1) dwelling unit per twenty (20) net acres calculated over the original parcel shall be configured as a clustered Rural Conservation Subdivision with at least 35% of the new buildable area as common open space.
- Required open space shall be configured in a single contiguous tract to the greatest extent feasible. Open space shall be contiguous with protected open space on adjacent parcels and public conservation lands to the maximum extent feasible.

Borrow activities that take place on agriculturally zoned lands and that upon completion and reclamation of the borrow pit activity the land is returned to an agricultural use, as defined by Section 570.02 F.S., for a period of no less than three (3) years from final reclamation shall be exempt from this policy.

The effect of the proposed text amendment will:

1. Allow properties in the WPA to be utilized for borrow activities without setting aside 50% of the property for open space if after reclamation the property is used for an agricultural use for a period of no less than 3 years from reclamation.
2. Allow the Owner to use the maximum amount of the property to extract clean fill from the property to benefit construction of the Wekiva Parkway.

3. Not preclude imposing the 50% open space requirement when property is developed for any purpose other than as borrow activities.
4. Not preclude imposing the 50% open space requirement when property utilized for borrow activities is not used for agricultural purposes following reclamation for the requisite 3 year period.
5. Not preclude imposing the 50% open space requirement when after reclamation and after the property has been used for agricultural use for the 3 year period the property is approved for other development.

Demonstration of Need

Residential. If the amendment will increase the density, please include statements demonstrating that additional lands for residential use are needed to accommodate population projections consistent with the Comprehensive Plan and that the lands are in the most appropriate location with respect to the most efficient use of public facilities and services for the increased density and with respect to all other policies of the Comprehensive Plan.

Response: The amendment will not increase the density for residential development.

Nonresidential/Commercial/Industrial. Please demonstrate the need for any additional non-residential and commercial/industrial lands based upon population and employment with the service area, vacancy rates for similar uses and ability reduce overall future transportation demands on the road network (reduction of vehicle miles travelled).

Response: The amendment will not increase the number of non-residential and commercial/industrial lands. The property benefitted by the amendment is non-residential, agricultural lands.

Impact on Levels of Service. Please demonstrate that facilities and services are or will be available within the adopted levels of service throughout the Comprehensive Plan (or the levels of service adopted by the municipality in whose utility area the proposed amendment is located and as adopted in the Capital Improvements Element or by joint agreement with the County), including, but not limited to, water supplies (including permitted quantities) facilities, sewer services, solid waste transportation, parks and recreational facilities and schools:

Response: The amendment will not impact adopted levels of service. Each property in the WPA seeking approval for borrow activities will be evaluated individually for its impacts on water supplies facilities, sewer services, solid waste, and transportation. Borrow activities do not impact parks and recreational facilities or schools.

Increasing the percentage of property used for borrow activities by removing the open space requirement for borrow activities will not significantly increase impacts on water, sewer, or solid waste facilities, if at all. Borrow activities only require use of groundwater for potable needs:

drinking and restroom facilities, for dust and fugitive particle control, and to maintain a filled tank for fire protection if needed. Most borrow operations provide bottled water and port-o-lets thereby reducing the need for water and sewer services. Other properties may be served by private wells and septic systems, or by the City of Eustis or the City of Mount Dora. Minimal water is used for dust and fugitive particle control even with an increase in the amount of property that can be used for borrow activities. Depending on the size of the property the on-site water tank for fire protection many increase, however, it is unlikely the tank will be required to be filled more than one time. The tank will be filled using an on-site Borrow activities do not generate solid waste other than a small amount collected from normal day to day activities. Solid waste is collected onsite and disposed of offsite by a contracted third-party provider. No public solid waste facilities are impacted.

Every approval of a Mining Site Plan (“MSP”) for borrow activities requires a County approved Transportation Map. An owner may be required to conduct a traffic study before obtaining a MSP, and may be required to make road improvements to meet adopted levels of service. This requirement will not change as a result of the text amendment.

Demonstrate that the amendment will not fiscally burden County services.

Response: Removing the open space requirement as proposed by the amendment will not fiscally burden County services. All properties within the WSA already receive fire and police services. Properties within the WSA that receive County solid waste services pay the costs associated with the service so there will not be a fiscal burden on the County. No additional County administrative services are required as a result of the amendment.

Demonstrate that the amendment would not cause unnecessary and unmitigated negative impacts on natural resources, including, but not limited to, wetlands, uplands, habitat, wildlife corridors, wildlife, groundwater and surface water, recharge, karst features and further demonstration that the integrity of interconnected ecosystems of local, state, regional and federal significance will be preserved:

Response: Removing the open space requirement for borrow activities will not cause unnecessary and unmitigated negative impacts on natural resources. Even without the proposed text amendment borrow activities may not cause unnecessary and unmitigated negative impacts on natural resources. As part of obtaining a MSP for borrow activities, an applicant must sufficiently address the following standards:

Environmental Protection Standards: wastewater treatment and storm water management;

Groundwater

Surface water

Wetlands

Wildlife resources: complete a Threatened and Endangered Species report;

Floodplain determination

Solid waste

Hazardous waste

Noise

Air Quality

Erosion and Sediment control

Floridan Aquifer impacts

Drainage facilities

Geotechnical and Hydrogeological: complete an investigation which in part will identify karst features

Demonstrate that historic and cultural resources will not be affected by unnecessary and unmitigated negative impacts:

Response: Removing the open space requirement for borrow activities will not affect historic and cultural resources. Even without the proposed text amendment applicant for a MSP for borrow activities must identify any archeological or historic resources located on the property, and if discovered the applicant must notify applicable federal, state and local agencies.



March 14, 2013

**BY EMAIL bsheahan@lakecountyfl.gov
AND U.S. MAIL**

Brian T. Sheahan, AICP, Manager,
Planning & Community Design Division
Growth Management Department
Post Office Box 7800
Tavares, Florida 32778

Re: Tom West Borrow Pit Comprehensive Plan
Wekiva Policy Text Amendment Application -
LPA#13/3/4-4
Project No. 2012120006, Application Request No. 2173
Response to 1st Request for Additional Information

Dear Mr. Sheahan:

Please find below additional information requested in your letter dated March 5, 2013.

REVIEW COMMENTS

PLANNING & COMMUNITY DESIGN DIVISION

Environmental

1. **Review Comment:** If borrow pits are going to be allowed to utilize all of the site as indicated in the response, is it the intent to exempt borrow pits from preserving sensitive natural habitats such as, but not limited to, Xeric Oak Scrub and Pine Flatwoods? If not, the proposed amendment needs to be clarified to be limited to those sites without protected natural upland plant communities.

Response: The applicant agrees to limit the amendment to the applicant's property to meet the specific needs of construction of or improvement to highways or other public works projects within the Wekiva River Protection Area, including the Wekiva Parkway (SR 429) and SR 46 Projects. A Listed Species Survey dated June 5, 2012, prepared by Ecological Consulting Solutions, Inc. demonstrates the applicant's property is free from sensitive

natural habitats including Longleaf Pine, Sand Hill, Sand Pine and Xeric Oak Scrub. No protected plant species were found on the property. No birds listed as protected by FWC and/or USFWS were observed on site. No scrub jays were observed or vocalizations heard on the property. In addition, surrounding adjacent properties do not contain scrub habitat. No red-cockaded woodpeckers were observed and the upland habitat type is not suitable for red-cockaded woodpeckers. There are no onsite wetlands or open water habitats, and no listed wading birds were observed on the property. Neither bald eagles nor bald eagle nests were observed on the property. The property is outside the 660 foot eagle nest protection zone. The development will not affect any bald eagle nests. No other listed raptors were observed on or off the property. A 50' buffer around the perimeter of the property consisting of trees and grass will be maintained and available for animals and birds feeding, nesting, roosting, resting, traveling and migrating. The applicant's property is free from native vegetation. The property has been utilized in the past for citrus crops and is currently grazing land for cattle. The existing trees and ground cover are not native vegetation which requires preservation. Gopher tortoises within the 50' buffer will not be disturbed and will be maintained on site within the Wekiva River Protection Area thereby ensuring sufficient habitat exists to maintain a viable population of gopher tortoises on the property. Additionally, no protected natural upland plant communities exist which requires protection in open space.

2. **Review Comment:** Policy 1-3.3.17 Preservation of Natural Habitats within the Wekiva River Protection Area requires the County to preserve natural habitats essential to any animals or plants designated as endangered, threatened, or species of special concern pursuant to the Florida Administrative Code and the Florida Statutes, particularly as they apply to the Wekiva River Protection Area. Such preservation shall ensure sufficient habitat exists for feeding, nesting, roosting, resting, traveling and migration, so as to maintain viable populations of listed species. Please respond how the amendment is consistent with this policy if no habitat is preserved onsite. For example, all gopher tortoise mitigation sites are located outside of Lake County. If no habitat is preserved within the Wekiva River Protection Area, how can the intent of this policy be achieved?

Response: The applicant's property is free from sensitive natural habitats essential to any animals or plants designated as endangered, threatened, or species of special concern. No sand skink or bluetail mole skinks are present on the property. The property is outside the sand skink consultation area. No protected mammals or their potential den sites were located on the property. A 50' buffer around the perimeter of the property consisting of trees and grass will be maintained and available for animals and birds feeding, nesting, roosting, resting, traveling and migrating. Gopher tortoises within the 50' buffer will not be disturbed and will be maintained on site within the Wekiva River Protection Area. Property not included within the 50' buffer is proposed to be developed as a dry borrow pit in two phases. Gopher tortoises will

only be removed from the phase being developed and relocated no earlier than required by the Taking Permit. Therefore, the only protected habitat on the property will be, in part, preserved within the Wekiva River Protection Area thereby being consistent with the policy. In addition, after reclamation of the mining use, the property will be reestablished with a more appropriate ground cover and diverse habitat to feed animals and birds than currently exists. Gopher tortoises will also repopulate after mining is discontinued.

3. **Review Comment:** Preservation of Native Vegetation within the Wekiva River Protection Area requires that native vegetation within the Wekiva River Protection Area be preserved to the greatest extent possible. The policy requires that clearing of native vegetation shall be limited to only those areas approved in accordance with a vegetation survey and protection plan submitted to and approved by Lake County, with the exception of those areas devoted to bona fide agricultural uses as specified and those activities necessary for normal yard maintenance. Agricultural uses enjoy special exceptions in both statute and the comprehensive plan. Please respond why borrow pits should be allowed the same exceptions to this policy as agricultural uses.

Response: The applicant's property is free from native vegetation. The property has been utilized in the past for citrus crops and is currently grazing land for cattle. The existing trees and ground cover are not native vegetation which requires preservation. Additionally, the property is currently utilized for agricultural purposes, and as part of the agricultural use, even without the requested amendment, this property could be cleared of any native vegetation, if any existed.

4. **Review Comment:** The site is located within the Wekiva River Protection Area (WRPA) and the Wekiva Study Area (WSA). Policy 1-3.3.20 Mining and Borrow Activities within the Wekiva River Protection Area allows borrow activities in the WRPA with approval by the Board of County Commissioners. The intent of the policy is to limit borrow activities to those necessary for the construction of or improvement to highways or other public works projects (within the Wekiva River Protection Area. The amendment language should include language to this effect.

Response: The applicant agrees to limit the amendment to the applicant's property to meet the specific needs of construction of or improvement to highways or other public works projects within the Wekiva River Protection Area, including the Wekiva Parkway (SR 429) and SR 46 Projects. Therefore, the revised proposed amendment stated below includes such limiting language.

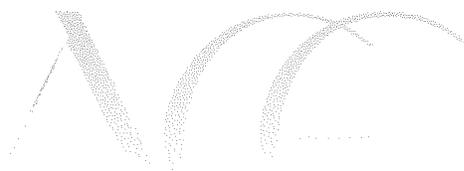


5. **Review Comment:** Policy 1-3.4.5 requires protection of open space to protect natural resources “to create large contiguous tracts of common open space; to protect environmentally sensitive areas, including but not limited to habitat, wildlife, and wildlife corridors...” Please provide a response on how exempting borrow pits from open space requirements would meet the requirement to protect wildlife and wildlife corridors that may exist on the property. Please comment on the situation where fauna may exist on the site and be protected without having to provide open space. It is understood from the proposed amendment that all wildlife and plants (other than any required buffers) would be removed from the site if approved as a borrow pit.

Response: Perimeter buffering around borrow pits is required. Within the buffer, vegetation, grasses and trees will be present to provide habitat for wildlife, wildlife corridors, and to maximize buffering to adjacent properties. Also, the perimeter buffering will provide sufficient habitat for gopher tortoises remaining on the property as they are the only protected fauna existing on the property. Borrow pits do not negatively impact the aquifer recharge capabilities of the property. No karst features exist on the property. Even though no designated open space will be set aside in conservation, a 50’ perimeter buffer will exist and serve the same purpose of open space. Once the mining operation is complete, the property will be reclaimed with ground cover and a more diverse habitat to feed animals and birds than currently exists. Gopher tortoises will also repopulate after mining is discontinued.

6. **Review Comment:** On page 2 of the supplement, it is indicated that the proposed amendment will “allow properties in the WPA to be utilized for borrow activities without setting aside 50% open space...” The open space is actually required by the A-1-20 Sending Area Future Land Use Category for all development. Borrow pits are specifically identified as development in the comprehensive plan. To meet the stated intent to exempt borrow pits from being considered either development or to not require them to meet the open space requirements, additional amendments are necessary. Please provide suggested amendments that address this conflict.

Response: The applicant agrees to limit the amendment to the applicant’s property to meet the specific needs of construction of or improvement to highways or other public works projects within the Wekiva River Protection Area, including the Wekiva Parkway (SR 429) and SR 46 Projects. Therefore, the proposed language provided at the end of this response addresses open space requirements set forth in the following policies, Policy 1-3.4.5, Policy 1-3.2.2, Policy III-3.2.5 and Policy IX-1.2.2.

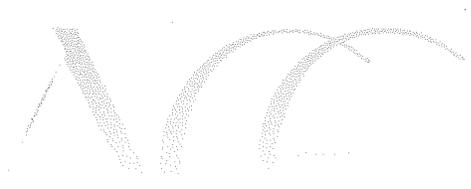


7. **Review Comment:** The amendment appears to conflict with 369.321(3) F.S. upon which Policy 1-3.4.2 is based. This statute requires, in part, that “Local governments shall amend their comprehensive plans to establish land use strategies that optimize open space and promote a pattern of development on a jurisdiction-wide basis that protects the most effective recharge areas, karst features, and sensitive natural habitats including Longleaf Pine, Sand Hill, Sand Pine, and Xeric Oak Scrub. Such strategies shall recognize property rights and the varying circumstances within the Wekiva Study Area, including rural and urban land use patterns.” No analysis has been provided that addresses the consistency of the proposed amend with this requirement and would provide a blanket exemption for borrow pits whether protected features existed on the property or not. Please provide a response or modified language that would address this situation.

Response: The applicant agrees to limit the amendment to the applicant’s property to meet the specific needs of construction of or improvement to highways or other public works projects within the Wekiva River Protection Area, including the Wekiva Parkway (SR 429) and SR 46 Projects. The property’s recharge capabilities are not impacted by the borrow pit activities. No karst features exist on the property and there are no sensitive natural habitats on the property. A 50’ perimeter buffer will provide sufficient habitat for a viable gopher tortoise population. The revised proposed amendment provides an exemption for this property only, and not a blanket exemption for borrow pits. The benefits of any borrow mining project on this property to further the objectives of the Wekiva Parkway (SR 429) and SR 46 Projects substantially outweighs any optimization of open space. The project will have a 50’ perimeter buffer which will provide the same benefits as dedicated open space.

8. **Review Comment Review Comment:** The amendment seeks to allow the property to be used for agricultural purposed for only three (3) years after completion of restoration. The Land Development Regulations allow the reestablishment of agricultural uses for 15 years. Please consider amending this term to 15 years.

Response: The revised amendment seeks to require the property to be used for agricultural purposes for three years after completion of restoration. The applicant believes this is a reasonable time frame to continue using the land for agricultural pursuits. Any other use will require Lake County approval. The three year requirement is only applicable to the applicant’s property. In the event the property supplies fill for construction of or improvement to highways or other public works projects within the Wekiva River Protection Area, the benefit to the public greatly outweighs requiring a lengthier time to continue the property for agricultural purposes.



9. **Review Comment:** The analysis provided discusses “dry borrow pits,” however the amendment does not limit the sought after exemption. Please respond whether this is the intent or provide amended language limiting the exemption to dry borrow pits.

Response: The revised amendment limits the exemption to dry borrow pits on the applicant’s property.

10. **Review Comment:** The Wekiva Guidelines, DCA, 2005 (upon which the subject policy is based), states on page 14 that open space should be optimized by giving priority to “the resources required to be protected by the Act, including most effective recharge areas, karst features, and sensitive natural habitats, such as, long leaf pine, sand hill, xeric oak scrub, and sand pine scrub vegetative communities. Additionally, local governments should establish targets, for instance ranging from 50% to 80% open space in association with clustered development, to maximize the amount of land to be protected as open space. The more sensitive the resources within the local jurisdiction, the greater the open space standards should be in combination with land use strategies to protect resources.” Please respond how the development of a borrow pit can meet the intent of this policy.

Response: The applicant’s property does not have native vegetation, is free from sensitive natural habitats including Longleaf Pine, Sand Hill, Sand Pine and Xeric Oak Scrub, and is free from sensitive natural habitats essential to any animals or plants designated as endangered, threatened, or species of special concern. Only gopher tortoises exist on site. Those located within the 50’ buffer will remain on the property within the Wekiva River Protection Area. Therefore, aside from the 50’ perimeter buffer that will not be disturbed, there are limited resources requiring protection in open space. The mining activities do not impact the recharge capabilities of the property. Karst features have not been identified on the property. After reclamation of the mining use, the property will be reestablished with a more appropriate ground cover and diverse habitat than currently exists. Gopher tortoises will also repopulate after mining is discontinued. If the property is developed following reclamation, open space will be required to be set aside in accordance with Lake County’s Comprehensive Plan, currently 50%. There are other properties within the Wekiva River Protection Area with more sensitive resources than this property. For the reasons stated above, the use of the property as a borrow pit on the applicant’s property without setting aside open space still meets the intent of the policy.

11. **Review Comment:** Policy III-2.3.12 Regulate Land Use Activities requires that the County regulate land use activities that have potential to adversely impact springsheds. The policy indicates that “the County shall prohibit inappropriate land uses from being located in karst areas with an aquifer connection, springshed protection zones, protected recharge areas and most effective recharge areas, unless impacts can be mitigated.” It specifically identifies mining

as an inappropriate land uses, specifically identifying mining The County shall require the use of Best Management Practices and performance standards to maximize open space, limit impervious surfaces and turf grass areas, promote protection of natural vegetation, promote the use of pervious parking areas, and treat stormwater to protect water quality.

Response: The mining activities do not impact the recharge capabilities of the property. Karst features have not been identified on the property. Native vegetation is not present on the property. Therefore, protection is unnecessary. In fact, after reclamation of the mining use, the property will be reestablished with a more appropriate ground cover and diverse habitat than currently exists which will also provide stability and prevent erosion. Limited impervious surfaces are proposed, i.e. only a driveway apron connecting to CR 437. The reclamation plan will address storm water to protect water quality. The applicant will utilize Best Management Practices in its mining and reclamation processes. Therefore, all activities having any potential to adversely impact springsheds are being addressed and impacts mitigated.

12. **Review Comment:** Policy III-2.3.17 Establish a Water Quality Protection Strategy for Springsheds requires stormwater systems ensure that site alterations minimize natural vegetation. The removal of open space requirements and removal of all, or most, of the existing vegetation from the property for a borrow pit is inconsistent with this requirement. Please respond, how the proposed amendment can be made consistent with this requirement.

Response: Native vegetation is not present on the property. Therefore, any site alterations will not impact natural vegetation. The soil will not be compacted. After reclamation of the mining use, the property will be reestablished with a more appropriate ground cover and diverse habitat than currently exists to ensure stability and prevent erosion. The property will consist of minimal impervious surfaces (only a driveway apron connecting to CR 437). Site reclamation as proposed by Wicks Consulting, Services, Inc. will be conducted in a manner to eliminate risk of flooding on adjacent properties. Watershed boundaries shall not be crossed in restoring drainage patterns, but will be restored within their original boundaries unless otherwise approved by Lake County. Silt fencing shall be used along the down slope areas of all active excavation sites to prevent storm water erosion and provide wetland protection. Therefore, the revised proposed amendment is consistent with this requirement.

13. **Review Comment:** Policy III-3.2.5 Native Vegetation, Habitat, and Wildlife within Development Projects requires that vegetative communities and wildlife habitats be protected from adverse effects associated with development. The policy requires that development preserve wetlands and portions of developable uplands containing designated species or rare upland habitats. Sites containing Gopher tortoises and other designated species are required to preserve up to 50% of the trees onsite. Special consideration shall be given to

designated species (Gopher tortoise and others) within Ecologically Significant Areas such as the Wekiva River Protection Area. The policy requires that this be achieved, in part, through the protection of open space on a development site. Please respond how the proposed amendment is consistent with this policy.

Response: The policy states there should be a target of protecting 50% of trees onsite to ensure the protection of trees and native vegetation. However, native vegetation is not present on the property. Therefore protection for native vegetative communities is not applicable. Trees located on the property are non-preferred trees, and mature harvestable hardwoods. Trees within the 50' perimeter buffer will remain. Therefore, a significant number of trees will be protected despite their non-preferred status. The property is currently being utilized for agricultural purposes and all the trees may be harvested without any development taking place. Allowing mining activities on the property will actually provide greater preservation of the existing, non-preferred trees. The trees remaining in the 50' buffer will have the same effect as if in a designated open space. Gopher tortoises within the 50' buffer will not be disturbed and will be maintained on site within the Wekiva River Protection Area. Property not included within the 50' buffer is proposed to be developed as a dry borrow pit in two phases. Gopher tortoises will only be removed from the phase being developed and relocated no earlier than required by the Taking Permit. Therefore, the only protected habitat on the property will be, in part, preserved onsite thereby being consistent with the policy. Gopher tortoises will also repopulate after mining is discontinued.

14. **Review Comment:** Policy III-3.2.17 Wildlife Consideration within Development Projects provides for limits of the development area if the preservation of listed species is possible onsite. In areas of ecological significance, such as the Wekiva River Protection Area (WRPA), it must be demonstrated that:

- The developer/applicant must accomplish development in such a fashion as to avoid the habitat of the listed species; or
- If it is not possible to avoid the habitat of said species with the approved use, then an applicant would need to relocate the species on site to an equally suitable area consistent with guidelines published by the Florida Fish and Wildlife Conservation Commission; or
- If via site analysis, that development with the approved use cannot be accomplished through onsite relocation and that a conservation benefit can be achieved for the species and natural community through off-site relocation. Relocation must take place within the same area of ecological significance with the preference given to properties adjacent or close to the donor site. To the extent possible, commensal species shall also be relocated with the designated species.

If listed species are present on a chosen site and all of the property were developed as a borrow pit, will the applicant be required to identify suitable off-site relocation within the WRPA? Please also provide any known designated relocation sites within the WRPA.

Response: The only protectable species on the property is the gopher tortoise. The mining activities cannot take place in such a fashion as to avoid the gopher tortoise habitat completely. Those located within the 50' buffer will not be disturbed and will be maintained on site within the Wekiva River Protection Area. The remaining gopher tortoises will only be removed and relocated as a phase is being developed, and then pursuant to a Taking Permit. They will be relocated in accordance with a management plan acceptable to, and permitted by the Florida Fish and Wildlife Conservation Commission. There are no receiving areas on adjacent properties or within the Wekiva River Protection Area or Wekiva Study Area. They will be relocated to an approved recipient site.

15. **Review Comment:** Minimum open space standards are required by Policy IX-1.3.6 Land Development Regulations. Please indicate how the proposal to have no open space requirements for the development of borrow pits meets this policy.

Response: Although no designated open space will be dedicated, a 50' buffer will not be disturbed thereby leaving in place gopher tortoise habitat, existing grasses, vegetation and trees. The 50' undisturbed buffer will serve the same purpose of open space. Additionally, once the mining operation concludes and the property undergoes reclamation, agricultural uses will continue. The reclamation will provide better ground cover than presently exists. The purpose of the open space requirement can be met for this particular property without imposing a minimum open space requirement. The property's use as dry burrow pit will not affect the rechargability of the property, cause aquifer contamination, or negatively impact springsheds. Future development of the site will require a significant portion of the property be set aside for open space. Additionally, agricultural uses are recognized as an important and necessary economic activity within Lake County and a legitimate and productive use of the land within the WRPA. Finally, in the event the property supplies fill for construction of or improvement to highways or other public works projects within the Wekiva River Protection Area, the benefit to the public greatly outweighs requiring a minimum open space.

16. **Review Comment:** Policy IX-1.2.2 Best Management Practices requires the use of Best Management Practices and performance standards and Policy III-2.2.15 Best Management Practices for the Control of Erosion and Sedimentation both require that development (borrow pits are considered development) maximize open space, protect natural vegetation, and protect water quality. Please respond how the proposed amendment will be

consistent with these policies if no open space is provided until after development as a borrow pit.

Response: No protected plant species were found on the property. Native and natural vegetation is not present on the property. Therefore protection in open space for protected, native or natural vegetative resources is not necessary. The mining operations as a dry borrow pit does not adversely impact the aquifer, water quality or rechargability of the property. Therefore, protection in open space for these purposes is also unnecessary. Maximization of open space is beneficial when a property has significant protected resources or when the development will adversely impact the water quality and natural vegetation. The mining operation and agricultural pursuits will follow Best Management Practices. The intent of this policy can be met without designated open space.

The applicant agrees to limit the amendment to the applicant's property to meet the specific needs of the construction of or improvement to highways or other public works projects within the Wekiva River Protection Area, including the Wekiva Parkway (SR 429) and SR 46 Projects. Therefore, below please find the **proposed amendment** to be included in subarea policies in Objective I-1.6: Sub-Area Policies.

Policy I-1.6.X Specific Limitations on the Tom West Property

In order to provide needed fill material for the construction of or improvement to highways or other public work projects within the Wekiva River Protection Area, including the Wekiva Parkway (SR 429) and SR 46 Projects, as demonstrated by data and analysis the following shall apply to the following three parcels, totaling 83 +/- acres, more particularly described as Parcel Nos. 17-19-28-000200000700 (Alt. Key 1597030) and 17-19-28-000200000800 (Alt. Key 1597048) and further described as Parcel 1 – the SW ¼ of the NW ¼ of Section 17, Township 19 South, Range 28 East, Parcel 2 – the NW ¼ of the NW ¼ and the West 90 feet of the NE ¼ of the NW ¼ of Section 17, Township 19 South, Range 28 East, and Parcel 3 – Begin at the intersection of the Easterly right-of-way of Hwy No. 437 and the South line of Section 7; run thence N 89°26'33" E along the South line of the SE ¼ of Section 7 a distance of 2508.52 ft., more or less, to a 6" concrete monument at the SE corner of Section 7; thence continue N 89°26'33" E along the South line to Section 8 a distance of 70.0 ft.; thence N 0°33'27" W, 70.0 ft.; thence S 89°26'33" W parallel with the South line of Section 7 a distance of 2577.21 ft. to the Easterly r/w of Hwy. No. 437; thence S 0°30'53" W along said Easterly r/w of Hwy No. 437 a distance of 70.0 ft. to the P.O.B. (the "Parcels").



Brian T. Sheahan, AICP, Manager
Planning & Community Design Division
Growth Management Department
March 14, 2013
Page | 11

Notwithstanding any policy herein, the Parcels shall be exempt from open space, environmental and tree preservation requirements for a borrow pit use, if such use is permitted through a mining conditional use approval subject to the following:

1. Any mining use shall not exceed a term of 10 years and be reclaimed within such time.
2. Upon completion of any mining use the Parcels shall be returned to agricultural use for a period not less than 3 years upon completion of final reclamation.
3. A percentage of the upland shall be designated as open space and placed within a conservation easement prior to any development excepting any mining use. The percentage shall be determined at the time of development in accordance with the Lake County comprehensive plan, code and land development regulations.
4. Mining use shall be limited to dry burrow pit.

The Future Lake Use Map shall contain a note stating this limitation.

Should you have any questions regarding the above referenced responses, please do not hesitate to contact me. As discussed it is our desire to remain on the April P & Z and BCC hearing agendas as I will not be available April 29, 2013 - May 3, 2013. I look forward to hearing from you.

Sincerely,



Anita Geraci-Carver

AGC/sw

cc: T. Milton West
Dallas Wolford
Ted Wicks, P.E.

