MINUTES
LAKE COUNTY GREEN SWAMP MINING COMMITTEE
August 16, 2012

The Lake County Green Swamp Mining Committee met on Thursday, August 16, 2012 in the Commission Chambers on the second floor of the County Administration Building.

Members Present:

Tracy Mouncey, Chairman
Nancy H. Fullerton
Kraig McLane (arrived at the meeting at 9:11 a.m.)
J. Michael O'Berry
Douglas Dufresne, P.G.
Steve Adams

Members Not Present:

Commissioner Welton G. Cadwell, Liaison

Staff Present:

Brian T. Sheahan, AICP, Planning Manager, Planning & Community Design Division
Scott Catasus, Environmental Specialist, Code Enforcement Division
Erin Hartigan, Assistant County Attorney
Anita Greiner, Chief Planner, Planning & Community Design Division

Outside Agency Staff:

Barbara Powell, Planning Analyst, Department of Economic Opportunity

Chairman Tracy Mouncey called the meeting to order at 9:04 a.m. and led the Pledge of Allegiance.

AGENDA

Ms. Mouncey asked if there were any changes to the agenda.

MOTION by Nancy Fullerton to ask for public comment after each subject, instead of waiting until the end of the meeting. No one seconded the motion; the motion failed.

Mr. Sheahan noted that on today's Agenda there is a review of the Committee's recommendations *[a copy of the Agenda and the Committee's recommendations are attached to the minutes as Exhibit #1]*; he received communication, which he forwarded to the Committee members, from Ms. Cox and the Alliance to Protect Water Resources (APWR), which had a revised set of recommendation suggestions *[a copy of the communication from Ms. Cox and APWR are attached to the minutes as Exhibits #2 and #3, respectively]*. He suggested that allowing public input after each objective would satisfy what Ms. Fullerton was asking for.

MOTION by J. Michael O'Berry, SECONDED by Steve Adams to allow public comment after each objective is discussed.

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

MINUTES

MOTION by Douglas Dufresne, SECONDED by J. Michael O'Berry to APPROVE the June 28, 2012 Lake County Mining Committee minutes, as submitted.

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

OPENING REMARKS

Ms. Mouncey noted that if the draft can be finalized today, they could meet one more time to approve the completed version; she stated that they will review the Committee's objectives and then review recommendations received from the public.

OBJECTIVES AND RECOMMENDATIONS REVIEW

Objective: *Ensuring any existing or proposed regulations are clear*

Ms. Mouncey read the first objective "*Ensuring any existing or proposed regulations are clear*" and noted that there are five recommendations under this objective; she asked if anyone on the Committee had any questions or amendments to the recommendations. Mr. McLane arrived (9:11 a.m.). Mr. Sheahan read the five recommendations listed under the objective. Ms. Fullerton referred to the handout the Committee received from the APWR and asked if everyone on the Committee received the handout. It was noted that they did. Ms. Mouncey stated that one of the recommendations under the first objective is to ensure the terms Prime Recharge Area, Recharge Area and Protected Aquifer Recharge Areas in the Land Development Regulations are consistent with the Water Management District's terms and definitions; she noted that is what the APWR letter is asking for as well. Ms. Fullerton agreed that the APWR letter is asking for the terms to be addressed; she then read the following recommendation "committee discussion review of reports, general observation has revealed another factor that influences the protection issue of the Green Swamp; this factor is the often-stated problem that government is unable to afford adequate staff to analyze cumulative effects of sand mining in the Green Swamp, that could justify more protection. There is also the possibility that the industry could contribute additional funds". She asked that the Committee recommend to the Board of County Commissioners (Board) to hire a hydro-geologist, so that questions could be answered. Ms. Mouncey noted that in this fiscal environment, hiring more staff may not be received well; she

further noted that when an application is submitted to the County a third person, perhaps a hydro-geologist or another expert could be contracted to review the application. Ms. Fullerton reiterated that she would like the Committee to ask the Board to hire a hydro-geologist on staff. Mr. O'Berry explained that mining is a regulated industry and he does not have any problem with a staff person reviewing the applications, nor does he have any issues with an independent person reviewing the application. Mr. Adams agreed with Mr. O'Berry and further suggested that if a contract for a consultant is used on an on-call basis, the contract could be written so the consultant could not represent mining companies while on contract with the County. Mr. Sheahan noted that the County currently has a contract with a company for on-call services of this nature. Mr. O'Berry suggested that the Committee encourage the County to continue their current practice as a show of support. Ms. Mouncey asked staff to put Mr. O'Berry's suggestion under "other items to be considered". There were no other comments from the Committee concerning this objective.

MOTION by J. Michael O'Berry, SECONDED by Steve Adams to ACCEPT the recommendations as shown on the overhead for the objective *Ensuring any existing or proposed regulations are clear* *[A copy of the recommendations as shown on the overheard are attached to the minutes as Exhibit #4]*.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**
NOT PRESENT:	**None**
MOTION CARRIED:	**6-0**

Public Comment

Peggy Cox, a citizen from Clermont who is a member of the APWR, Orange Audubon Society, Central Florida Sierra Club and an incoming trustee to the Lake County Water Authority Board, noted under the recommendation for the development review criteria to be consistent with the 2030 Comprehensive Plan, that a policy in the Conservation Element states that the County shall preserve the integrity of the Green Swamp as an intact ecosystem of statewide significance by protecting its natural resources, including but not limited to, hydrologic regimes, wetland and upland communities, floodplain, ecologic connectivity, wildlife and aquifer recharge. She believes the current policies and regulations are inadequate to meet these standards. She explained that the Big Creek Basin and the Clermont Chain-of-Lakes are Outstanding Florida Waters and there are higher standards for any discharge into an Outstanding Florida Water and noted that there are policies within the Comprehensive Plan on Outstanding Florida Waters. She stated that the mining regulations should be consistent with the Comprehensive Plan.

Ms. Fullerton asked what water quality means in the recommendations, is it referring to Green Swamp water quality, wetlands or mine pit water quality. She asked if that needed to be qualified. Ms. Mouncey asked to defer this discussion until the Committee discussed that objective and recommendation. There being no one else who wished to speak, public comment was closed.

MOTION by J. Michael O'Berry, SECONDED by Steve Adams to APPROVE the first objective and the five supporting recommendations.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**
NOT PRESENT:	**None**
MOTION CARRIED:	**6-0**

Objective: *Eliminate overlapping or duplicative review*

Ms. Mouncey read the objective and the recommendation. She asked for any comments on this objective and recommendation. No one from the Committee had any comments.

Public Comment

No one from the public wished to speak concerning this objective.

MOTION by Douglas Dufresne, SECONDED by J. Michael O'Berry to APPROVE the objective and the supporting recommendation.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**
NOT PRESENT:	**None**
MOTION CARRIED:	**6-0**

Objective: *Ensuring the water quality and quantity are maintained or improved*

Ms. Mouncey read the objective and the recommendation. She noted that this was discussed at length during previous meetings, along with presentations from the Water Management District and the Bureau of Mines with the Department of Environmental Protection (DEP). She further noted that water quantity and quality issues are regulated by the Water Management District and that the existing mining regulations are clear. Ms. Fullerton stated that ensuring water quality and quantity are maintained or improved is very important and asked what this refers to; the water quality of the Green Swamp, wetlands, sand mine pits or the Clermont Chain-of-Lakes. She requested clarification on this objective. She noted the recommendation reads "*Maintain existing mining regulations"* and asked why; she stated that there needs to be more information under this recommendation. She stated that the APWR recommendations, submitted by Peggy Cox, could be implemented to revise the regulations; she referred to the handout *[Exhibit #2]*.
Ms. Mouncey explained that the recommendation to maintain existing mining regulations means that the existing regulations, such as the Environmental Resource Permit (ERP) and the Water Management District requirements need to stay in place and continue to be complied with. Ms. Fullerton requested that this objective be put on hold until next month's meeting; she feels it needs more information added to it. Ms. Mouncey stated that she thought the Committee agreed that the Water Management District's and DEP's existing mining regulations provided the protections that everyone desired. She noted that there are existing monitoring requirements and the permit is not issued if you do not meet the requirements established by the Water

Management District. She explained that by recommending "*maintain existing mining regulations"*, the Committee is telling the Board that they reviewed all of the existing regulations and are satisfied that the existing regulations protect the water quality and quantity; she noted that evidence showing the regulations are inadequate, has not been submitted. Ms. Fullerton asked that a summary of Ms. Mouncey's statement be placed in the recommendation as an explanation. Mr. Adams explained that if you discharge into an OFW, you have to meet a standard to obtain a permit; it is part of the environmental permitting process. Mr. O'Berry added that if you have an off-site discharge, you are required to have a NPDES permit, administered by the State of Florida; he further added that water quality and quantity issues are already addressed by the Water Management District and DEP and if you are going to impact an OFW, you have specific criteria that you have to meet. After permitting is completed, there are monitoring requirements. Ms. Fullerton asked for an additional layer of explanation on the recommendations. Ms. Mouncey asked if the recommendation could be amended to say the Committee has reviewed the Water Management District and DEP requirements and have determined that the assurance of water quality and quantity protection is in place. Mr. Adams suggested adding wording to the recommendation that shows the Committee reviewed all regulations and rules and that those regulations and rules provide assurance for water quality and quantity for individual and cumulative impact basis and list the rules that apply. He also suggested adding wording that states, if a project directly discharges into an OFW, you have to meet certain rules and list those rules. Mr. O'Berry stated that when a mining site plan is heard before the Board, they have an opportunity to add regulations that they feel are appropriate for that specific operation and the County also has an operating permit requirement, which dictates that you must obtain all other permits and approvals before you can obtain the operating permit; there is a multi-layer system in place to ensure the mine is appropriately permitted, before operation of the mine can begin. Ms. Hartigan reminded the Committee that a Conditional Use Permit or a Mining Site Plan approval process that is heard before the Planning & Zoning Board or the Board cannot be conditioned upon obtaining approvals from a State agency. Mr. Adams recommended that both the Florida Statute and the Florida Administrative Code be listed in the recommendations. Ms. Mouncey opened the discussion for public comment.

Public Comment

Peggy Cox asked if the Committee is making a recommendation that the water quantity and quality be maintained only as they relate to state agencies and not including the County LDRs relating to mining. Ms. Mouncey stated that maintaining the water quality and quantity is relegated to the Water Management District and DEP. Ms. Cox asked if the County LDRs can be different than what the Water Management District regulations are. Mr. Sheahan stated that water quantity, the consumptive use of water, is solely regulated by the Water Management Districts by statute; the St. Johns Water Management District is particularly adverse to any local government infringement in that realm. The County cannot adopt regulations that would limit the consumptive use of water. He noted that the County can have more stringent regulations on the quality of water; although there are regulations in place at the state and regional level. Ms. Cox asked if the County LDRs regarding mining could be changed regarding surficial withdrawal, so that mining activity within the Green Swamp shall not lower the level of the surficial aquifer beyond the boundaries of the mine and that it must be monitored to ensure this. She explained that the Clermont Chain-of-Lakes are seepage lakes and are fed through the

surficial aquifer and through Little Creek and Big Creek Basins. She also asked that regulations be added to require that the horizontal impervious layer be left undisturbed and un-penetrated; the current Code says, where feasible. She commented that there should be a higher standard within the Green Swamp Area of Critical State Concern. She suggested the creation of a regulation to ensure that natural existing stream channels cannot be relocated on a mining site within the Area of Critical State Concern. She stated that she feels specific regulations concerning water quantity and quality could be created as long as they do not infringe upon the authority of the Water Management District.

Linda Bystrak, a citizen from Leesburg representing the Ocklawaha Valley Audubon Society, noted that the Ocklawaha River headwaters is considered to be within the Green Swamp and because there is a huge wildlife population that lives within the Green Swamp area, the Audubon Society is very concerned about what happens in the Green Swamp, in particular the water levels. She referenced a study that was completed in January 2002 and placed the coversheet of the study titled *Hydrologic Effects of Sand Mining in Lake County, Florida [attached as Exhibit #5]* on the overheard. She asked if the Committee studied this document during their review and stated that she would like to endorse Ms. Cox's statements. She placed a Table from the referenced study on the overheard titled *Table 1. Water consumption by Sand Mines in Lake County (MGD) [attached as Exhibit #6]*. She noted that the first mine on the table has a consumptive use permit for 21 million gallons of water per day, which they claim is mostly recycled; she stated that on another page of this report it states that this mine is also performing sand washing and the water used for sand washing is not calculated. She explained that this chart is based on 1997 data and asked if the Committee has any newer data than this. Ms. Mouncey stated that they have ongoing consistent data from the Water Management District. Mr. McLane explained that the data is updated quarterly. Ms. Bystrak indicated that the referenced report states that mining changes the hydrology of the land; she explained that changes in hydrology can change the flow of the land. She would like the mining industry to prove that their activities are not impacting the lakes or the surface flow of the water. She noted, according to the report, that evaporation is not considered consumptive use and there is as much as 60 inches of evaporation each year and none of that water is accounted for. She asked Mr. McLane if evaporation was considered consumptive on the new reports. Mr. McLane said he would check to see if it was. Ms. Bystrak asked if the sand mines were monitored to ensure they are not selling water to other users. Mr. Sheahan explained that all uses have to be specified in the mining site plan and operating permit, including the types of trucks used and where the trucks are coming from and going to. Mr. McLane explained that when someone applies for a consumptive use permit, they have to specify what the use is for. He noted that is part of the test for efficient use, public interest and others. Mr. Sheahan reiterated that the County cannot regulate the consumptive use of water; the County could support the District making a change, but we could not do anything further. Mr. McLane explained that the Water Management District has exclusive authority for consumptive uses of water permitting and the Water Management District cannot delegate that authority.

Roger Sims, a citizen from Orlando representing the Central Florida Sand Mining Association explained that the selling of water pumped from a mine to bottlers is a clear violation of the consumptive use permit. He further explained that if changes in hydrology occurred at a mine site they are evaluated by DEP as part of the ERP process and as far as withdrawal of water, it is

reviewed in the consumptive use permit process. He further explained that OFW regulations are extremely complex, a direct discharge is inside the actual legally designated boundary of the OFW and an indirect discharge is in a feeder or stream that leads to an OFW; an evaluation has to be made to determine the effect caused by the time the discharge reaches the OFW. He noted that DEP administers the requirements and when you obtain a discharge permit, you have to comply with the regulations; he believes adding regulations describing how to comply with the regulations is ill advised.

No one else from the public wished to speak; Ms. Mouncey closed public comment.

Ms. Mouncey read the amended recommendation, "The Mining Committee has reviewed the DEP and Water Management District rules and has determined that the existing rules used by these agencies are adequate to ensure the protection of water quality, water quantity and OFW. Lake County should continue to support these standards to protect these resources consistent with the following statutes and rules, as may be amended *[the statute and rule numbers will be added to this recommendation]*. Further, the Committee understands the operating permits are issued consistent with DEP and Water Management District rules."

MOTION by Douglas Dufresne, SECONDED by J. Michael O'Berry to AMEND the recommendation as stated.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**
NOT PRESENT:	**None**
MOTION CARRIED:	**6-0**

MOTION by J. Michael O'Berry, SECONDED by Steve Adams to APPROVE the objective and the supporting recommendation.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**
NOT PRESENT:	**None**
MOTION CARRIED:	**6-0**

Objective: *Prevention, avoidance or mitigation of mining impacts to wildlife and habitat.*

Ms. Mouncey read the objective and the two supporting recommendations. She asked for discussion from the Committee. There was no one who wished to discuss this objective or recommendations. Ms. Mouncey opened the discussion to the public.

Public Comment

Peggy Cox asked if the current open space requirement is based on all of the acreage, not just the upland area. Mr. Sheahan explained that in the current regulations open space is based on net acreage; all wetlands have to be preserved, except for wetland impacts that are specifically mitigated. The open space is required to be net, which is upland area.

Linda Bystrak asked if the Committee reviewed the acid containment at the 474 mine. Ms. Mouncey stated that the objective of this Committee is to determine if there needs to be additional regulations for sand mining in the Green Swamp; that would not be under the purview of the Committee.

No one else from the public wished to speak; Ms. Mouncey closed public comment.

MOTION by Steve Adams, SECONDED by J. Michael O'Berry to APPROVE the objective and the two supporting recommendations.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**
NOT PRESENT:	**None**
MOTION CARRIED:	**6-0**

Objective: *Ensuring Sand Mining is not prohibited in the Green Swamp*

Ms. Mouncey read the objective and the recommendation. She asked for discussion by the Committee. Ms. Fullerton referred to the APWR notes and recommendations and noted that she would like the title of the objective changed to *Ensure Sand Mining is allowed in the Green Swamp.*

MOTION by Nancy Fullerton, SECONDED by Steve Adams to APPROVE changing the wording of the objective to *Ensuring Sand Mining is allowed in the Green Swamp*.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**
NOT PRESENT:	**None**
MOTION CARRIED:	**6-0**

Ms. Fullerton noted that one of the main requests that the environmental community has made is for an objective study on the cumulative effects of sand mining in the Green Swamp on water resources, flora and fauna, wetlands and surrounding land uses. She noted that there are four main sand mining companies that mine in the Lake County area, with 14 mines; she asked with that amount of mines, is there a higher effect on the land, water, resources and wildlife in the area. Ms. Mouncey stated that she does not have an issue with a cumulative impact study being done as long as all effects are considered, like agricultural uses, roads, drainage uses, residential uses and all other uses. She noted that a cumulative impact study would involve all uses within the Green Swamp. Mr. O'Berry explained that a mine that undergoes permitting through the Water Management District already goes through a cumulative impact analysis, from the hydrologic perspective. Mr. Adams added that an analysis is also completed on wetland impacts and the reports can be found on the Water Management District's website. Mr. O'Berry noted that impacts to wetlands in the Green Swamp are arguably under federal jurisdiction; you have to go through the dredge and fill permitting process, which includes listed species and archeological resources. This is an exhausted review and the US Fish and Wildlife Services reviews it for a

biological opinion. Ms. Fullerton asked if an updated aggregate study could be completed. Mr. McLane explained that the issues are addressed on a case-by-case basis with each permit application; if someone wanted to move forward with a comprehensive study that would look at effects of sand mining and other land and water uses in an area it could be done, depending on availability of staff time and resources to perform the work. There being no further discussion by the Committee, Ms. Mouncey opened the discussion to the public.

Public Comment

Peggy Cox commented that Ms. Fullerton was asking for a historic cumulative study of sand mining or mining in general, not agricultural or road impacts. She believes mining changes the hydrology of the area and that a cumulative study of the impacts of mining would address the amount of evapotranspiration that occurs from the lakes that perhaps impedes the flow of the surficial aquifer that feeds lakes and streams. She noted that she was in favor of the original language, which prohibited any new or expanded mines in the Green Swamp Area of Critical State Concern and she still stands by that.

Linda Bystrak placed a map on the overhead *[attached as Exhibit #7]* and noted the boundary line of the critical area, the location of the sand mines within the Green Swamp and the location of QUC sand, which is DOT grade sand. She pointed out locations on the map where QUC sand exists, which is outside the Green Swamp; she stated that mining for QUC sand could occur in those areas, outside of the Green Swamp. Mr. O'Berry noted that DOT grade sand does not occur everywhere sand exists, they have to identify where that sand is located and they have to go where those resources are located; they take into account a myriad of factors associated with pursuing mining on any given parcel. He explained that DOT sand occurs in very limited areas in the state of Florida; those areas are dwindling rapidly because of development and other pressures involved.

MOTION by Nancy Fullerton to have the Committee initiate an objective study of the cumulative effects of sand mining in the Green Swamp, such study should consider other consumptive users of water, including but not limited to, agricultural, residential and transportation uses. No one seconded the motion; the motion failed.

MOTION by Douglas Dufresne, SECONDED by J. Michael O'Berry to APPROVE the objective and the supporting recommendation.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**
NOT PRESENT:	**None**
MOTION CARRIED:	**6-0**

Ms. Fullerton discussed concerns she has with discharge from sand mines into OFWs. Mr. Sheahan informed the Committee that Comprehensive Plan, Policy III-2.2.7 states that the County shall participate in programs at the local, regional, state and federal levels to afford protection and management of land in watersheds and in water areas given special protection status. Those areas of special protection include, but are not limited to, the Green Swamp,

Ocklawaha River, St. Johns River, Outstanding Florida Waters and Outstanding Lake County Waters. He noted that within 12 months of adoption of the Plan, Land Development Regulations that require (above a given development threshold) an evaluation of impacts and demonstration that water quality and floodplain functions and values shall not be adversely affected, will be completed.

Other Items that should be considered

Ms. Mouncey read the items listed under *Other items to be considered* on the Agenda.

Ms. Fullerton commented that she would like the APWR's suggestion that the County hire a hydro-geologist on staff added to the items to be considered.

MOTION by Steve Adams, SECONDED by J. Michael O'Berry to add to the items to be considered, that the County continues to maintain a consultant contract with an independent hydro-geologist or to add a hydro-geologist to County staff to review mining applications.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**
NOT PRESENT:	**None**
MOTION CARRIED:	**6-0**

There was discussion on when the recommendations would be brought to the Board and the process of taking the LDR mining regulations to the Board.
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Public Comment

Linda Bystrak commented that about two weeks ago there was an article in the Daily Commercial that stated the Jahna Sand Mining Company purchased 80 acres next to their sand mine, located in the Green Swamp. She stated that they purchased the land prior to this Committee coming to a conclusion or making recommendations to the Board.

Wink Winkler, a professional geologist who works for E.R. Jahna, explained that there is more to finding an economic sand deposit than looking on a map *[referring to the map that was placed on the overheard as Exhibit #7]*. He further explained *[regarding the resent purchase of land]* that they have not decided if the property is going to be used for mitigation purposes, buffering or mining.

No one else who wished to speak from the public, Ms. Mouncey closed public comment.

MOTION by Steve Adams, SECONDED by J. Michael O'Berry to APPROVE the items listed under *Other items that should be considered*.

FOR:	**Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST:	**None**

NOT PRESENT: **None**
MOTION CARRIED: **6-0**

The Committee discussed rescheduling the September meeting. At 11:14 a.m., Ms. Mouncey announced that the Committee would take a 10-minute break. The Committee resumed the meeting at 11:19 a.m.

MOTION by Douglas Dufresne, SECONDED by Nancy Fullerton the Committee APPROVED rescheduling the September meeting to September 14, 2012 at 9:30 a.m.

FOR: **Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams**
AGAINST: **None**
NOT PRESENT: **None**
MOTION CARRIED: **6-0**

ADJOURNMENT

Ms. Mouncey adjourned the meeting at 11:21 a.m.

Respectfully submitted,

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Tracy Mouncey, Chairman