SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: **Set Hearing for Appeal to Staff Vesting Determination Filed by James Wade for Rocking G, Inc. Proposed Limerock Mine on September 14, 2010, at 5:00 p.m. at Bushnell Government Offices 910 N. Main Street, Bushnell, FL (Staff recommends approval).**

REQUESTED ACTION: **Board Direction**

☐ Work Session (Report Only) **DATE OF MEETING:** 8/24/2010
☒ Regular Meeting ☐ Special Meeting

CONTRACT: ☒ N/A Vendor/Entity: _____
Effective Date. _____ Termination Date _____
Managing Division / Dept: Planning

BUDGET IMPACT:
☐ Annual **FUNDING SOURCE:** _____
☐ Capital **EXPENDITURE ACCOUNT:** _____
☒ N/A

HISTORY/FACTS/ISSUES:

On July 23, 2010, the County received a Notice of Appeal of a staff vesting determination from James Wade, Attorney, on behalf of his client Rocking G, Inc. The Notice of Appeal is filed consistent with Section 13-236 and Section 13-852 of the Sumter County Land Development Code.

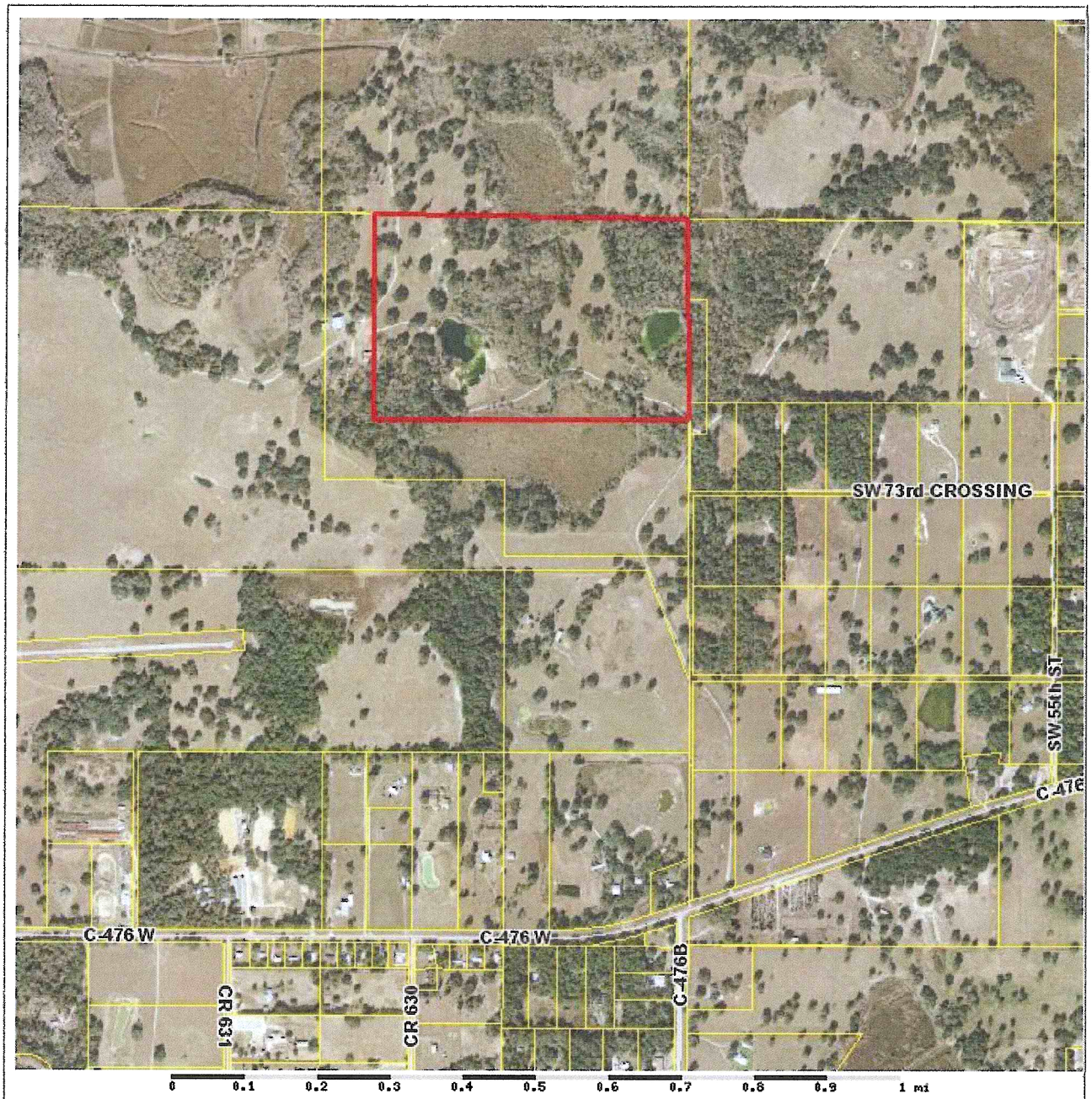
The appeal is based on Mr Bradley Cornelius', AICP, Planning Manager, determination that property owned by Rocking G, Inc. is not a vested limerock mine. A map of the subject property is attached.

A copy of Mr Cornelius's vesting determination and Mr. Wade's appeal is attached.

Pursuant to Section 13-236, Sumter County Land Development Code, the Board shall hold a hearing to review the staff determination of vesting and shall render a decision to either affirm, reverse, or modify the staff determination.

Staff requests the Board set a hearing for September 14, 2010, at 5:00 p.m. to consider the appeal filed by Mr Wade.

Additional information regarding this appeal will be provided to the Board prior to the September 14, 2010, hearing.



Sumter County BOCC - GIS

BOCC Bushnell, FL 33513 | 352-793-0200

Parcel ID **M21=025**

ROCKING G INC

1 N DALE MABRY HWY STE 800 S UITE 800 TAMPA, FL 33609

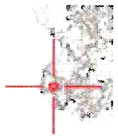
Street NOT ON FILE

S/T/R 21/21/21 FOR POB START AT NE COR OF SEC RUN N 88 DEG 51'34"W 2260.00 FT S 00 DEG 50'30"E 2260 FT S 00 DEG50'30"E 1550.00 FT S 88

Sales

5/1/2002	978/164	Vacant	$100.00

NOTES:



This information was derived from data which was compiled by the Sumter County BOCC - GIS This information should not be relied upon by anyone as a determination of the ownership of property, legal boundary representation, or market value The map image is not a survey and shall not be used in any Title Search or any official capacity. No warranties, expressed or implied, are provided for the accuracy of the data herein, it's use, or it's interpretation. This information was last and may not reflect the data currently on file at our office.

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wadelaw
JAMES E. WADE, III, P.A.

July 23, 2010

Mr Doug Gilpin, Chairman
Board of County Commissioners
Sumter County
910 N Main St., Suite 301
Bushnell, Florida 33513

Via Hand Delivery

FILED
JUL 23 2010
IN THE OFFICE OF
BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY
BUSHNELL, FLORIDA

Re: Notice of Appeal from determination by Bradley Cornelius regarding Rocking G, Inc. Reclamation and Reconfiguration Project; and Request for Variance

Dear Mr Gilpin.

Please accept this letter as my formal appeal and request for review of the decision and determinations as set forth in the letter from Bradley T Cornelius dated July 1, 2010, addressed to me regarding the above referenced matter and in response to my letter of inquiry dated June 21, 2010 I have attached a copy of both letters for your convenience. Sumter County Code Section 13-236(a)(3)b. provides that a Notice of Appeal should be filed "on a form provided by the commission", however per your staff there is no such formal form and this letter should suffice. Please advise if some other form is required.

This appeal is filed pursuant to Sumter County Code Section 13-236(a), Section 13-852(a) and Section 13 166-8 of Ordinance No. 90-12. To the extent that a strict interpretation of Ordinance 90-12 or the Sumter County Code creates a hardship upon Rocking G, Inc., I also request a variance per Section 13·166.7

There are several issues to be addressed in this appeal process, but first I point out a couple of typographical errors in the letter of July 1, 2010, just to be factually and technically accurate. My client's DEP ERP was issued May 13, 2003, not 1993 as stated in Bradley's letter Also, his letter referenced an appeal pursuant to 13-326, however I found no section 326 and presume the correct reference is 13-236.

While I respect that most of the comments and points made by Mr Cornelius are technically correct, he failed to properly recognize and apply some of the pertinent details and made erroneous decisions based upon misinterpretation and misapplication of the various provisions of Sumter County Code, ordinances, and applicable Florida State Statutes. I request the Sumter County Board of County Commissioners to review all applicable facts and issues and direct staff to recognize that the continuation of a non-conforming use and the physical existence of the two mine pits, whether or not timely registered, constitute a lawful mine for purposes of locational compliance with mining

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ordinance requirements such that the reclamation project can move forward through the Conditional Use and Operating Permit application process.

One significant error is that Mr Cornelius failed to properly recognize that the subject property and the existing mine pits constitute a non-conforming use of the subject property which has been continuous and which has not been abandoned since the early 1960's. A non-conforming use which predates the implementation of new laws and regulations is a vested right which must be allowed to continue, otherwise it may constitute a "taking" by governmental action and require compensation. Since the existing mine pits pre-dated the mining ordinance, they are allowed to continue as a non-conforming use both under the common law and under the terms and conditions of Sumter County's ordinance and Comprehensive Plan.

The existing mine pits meet the definition set forth in Ordinance 90-12 Section 13-166.1 G. 1 which states: "[L]awful Mine" means any mine as of the date of adoption of this ordinance that is permitted in accordance with zoning approval (zoned M-1 or M-2), or other applicable law which was in effect on the date the mine was first initiated or which constitutes a non-conforming use." Since the pits pre-date the mining ordinance, they constitute a non-conforming use. Non-conforming uses are specifically recognized and are constitutionally deemed vested under Ordinance 90-12 and Sumter County Code Section 13-802 which references 90-12 and sets forth that non-conforming uses shall be allowed to develop as approved prior to adoption of such ordinances and such non-conforming uses are statutorily vested.

Section 13-166.1 D. 1 provides: [A]ny mine which is a lawful mine as of the effective date of this ordinance, and the operator or owner of the mine complies with the registration provisions set forth in subsection (3) below, shall be permitted to continue to mine pursuant to the operating permit granted for that particular mine." Section 13-166.1 D. 2. provides: [A]uthorization to operate a mine which is lawfully in existence as of the effective date of this ordinance shall remain valid and in force. Should mining activities cease for a period of three (3) years, mining authorization shall expire unless extended. " My client's mine is a non-conforming use which was never abandoned, and which has not ceased mining activities for three (3) years and is a "lawful mine" per above definition. Since the mine pre-dated the ordinances and there was no applicable "operating permit", Ordinance 90-12 provides authorization to continue the non-conforming use until or unless the "mining activities" cease for three (3) years, and such activity is broadly defined to include the present reclamation project.

Mr. Cornelius' letter indicates that Sumter County has no record of the subject mine being "registered", but he failed to indicate any records supporting proper notification to the land owner(s) of record or notification to any holders of mineral rights

on the subject property within the 90 day window after approval of Ordinance 90-12 on September 19, 1990. I submit that neither the record property owner at the time or the record holder of a mineral rights interest received proper notice sufficient to eliminate the existence of two (2) physically existing mine pits.

Additionally, the penalty for failure to register, even assuming proper notification was given, is not to abolish the existing mines and create the legal fiction that they no longer exist, but merely to change the future requirements for operations. The failure to register does not alter the factual existence of a mine. Section 13.166.1 D. 5. provides: "[A]ny mine which has not applied for registration within the time period specified in Section 13-166.1 (D) (3) of this ordinance shall lose any vested rights or grandfathering for the ***operation*** of such mine. In order to operate such mine, the mine shall be required to comply with all provisions of this code including obtaining an approved mining site plan, operating permit, and proper zoning." (emphasis added) Nothing in the registration portion of the ordinance says that failure to register permanently closes an existing lawful mine, otherwise allowed to continue its non-conforming use, or requires it to move "adjacent" to existing legally permitted mine sites. This is in fact the reason for my letter of inquiry to Mr Cornelius in the first place – it seems to me that the extraction of additional rock beyond the footprint of the two (2) existing mine pits, which are continued non-conforming uses, pursuant to the ERP issued by the DEP will require compliance with obtaining an approved mining site plan, operating permit and proper zoning – which is a Conditional Use Permit.

Mr Cornelius has misinterpreted and misapplied some confusing and conflicting aspects of the Sumter County Code, Ordinances and Comprehensive Plan. The concept of "adjacent" location did not exist prior to the adoption of the Comprehensive Plan February 3, 1992, and thus is not a requirement under the 1990 Ordinance 90-12. The policy of the Comprehensive Plan Policy 7.1.11.2 specifically directs that Sumter County shall regulate mining activities to control various aspects, including reclamation of mined lands, pursuant to 90-12, which does not contain "adjacent" language. The Comprehensive Plan recently readopted as Ordinance 2009-02 did not change the reference to 90-12, however the 1996 Ordinance regarding Section 13-772 (d)(1) includes language that, " 'existing, legally permitted mine sites' shall mean those properties on which all required use and operating approvals and permits are in full force and effect."

This seems to be a more stringent definitional requirement than 90-12, but only applies to "lands approved for limerock mining activity after February 3, 1992 " Therefore this language should not be used or relied upon for determining whether or not the subject existing mine pits are non-conforming uses which have not been abandoned. The appropriate question should be whether or not the anticipated newly mined section of the overall reclamation project is properly adjacent to the existing non-conforming mine

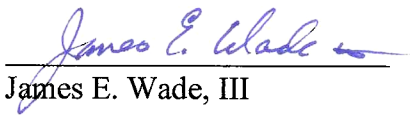
– which clearly is the case in this matter. But for the fact of the existing mines which need to be reclaimed, then Mr Cornelius' decision to deny the request for a new area for mining would be correct. In this case, Mr Cornelius has erroneously denied the request simply for the alleged failure to timely register under 90-12, which is not the appropriate penalty for such failure as clearly set out in the Ordinance. It does not say you can never mine – just that you have to get new operating approvals and comply with new buffers, etc. instead of operating under a previous operating agreement. No one has suggested that my client can not continue its non-conforming use and continue to mine on a small scale and utilize rock from the existing pits and from existing stockpiles. The only issue is whether or not my client can expand the footprint and excavate new areas to the extent of the ERP DEP permit and authorization.

I look forward to discussing this issue with the BOCC and answer any questions. I will provide additional supporting documentation and related maps prior to any scheduled hearing.

Thank you for your attention and prompt response to my request.

Sincerely,

JAMES E.WADE, III, P.A.



James E. Wade, III

JEW/sd

cc: Bradley Arnold
County Administrator (w/o enclosures)

Enclosures

Board of County Commissioners

Division of Planning & Development

Planning Services
910 N. Main Street, Suite 301 • Bushnell, FL 33513 • Phone (352) 793-0270 • FAX: (352) 793-0274
Website: http://sumtercountyfl.gov/planning

July 1, 2010

James E Wade, III, P.A.
116 Bushnell Plaza
Bushnell, FL 33513

Re Rocking G, Inc. Limerock Mine Reclamation and Reconfiguration Project

Dear Mr. Wade

This letter is in response to your letter, dated June 21, 2010, regarding the proposed limerock mine reclamation and reconfiguration project on property owned by Rocking G, Inc My response is focused on the issue on whether the proposed activity is consistent with the County's existing regulations related to limerock mining, specifically Policy 7 1 11 1(a), Sumter County Comprehensive Plan – Future Land Use Element, and Section 13-772(d)(1), Sumter County Land Development Code

The proposed mining activities of Rocking G, Inc. reclamation of old mine pits (pre-adoption of the County's zoning regulation and comprehensive plan) and additional extraction of limerock deposits from the old mine pits is considered mining and must be consistent with the County's regulations for mining.

The principal locational regulation for limerock mines in the County is they must be adjacent to existing legally permitted limerock mines (Section 13-772(d)(1), Sumter County Land Development Code and Policy 7.1.11.1(a), Sumter County Comprehensive Plan – Future Land Use Element).

An existing legally permitted limerock mine in the County is a mine that either has a valid Conditional Use Permit and Operating Permit approved by the Board of County Commissioners or registered with the County as a vested mine under the provisions of Ordinance 90-12

Based on the records within our office, the Rocking G, Inc. property does not have a

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Chairman
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Vice Chairman
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Garry Breeden, Dist 4
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2nd Vice Chairman
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Bushnell, FL 33513

valid Conditional Use Permit and Operating Permit approved by the Board of County Commissioners and was not registered as a vested mine under the provisions of Ordinance 90-12

Ordinance 90-12 established a new mining ordinance for the county One of the major provisions of the ordinance was the requirement for mines existing prior to adoption of the ordinance to register with the County to be considered as vested The ordinance provided that mines that failed to register shall lose any vested rights and must meet the current requirements and obtain proper zoning approvals Our office has no records indicating that the Rocking G, Inc. property registered under the provisions of Ordinance 90-12 In support of the registration process of Ordinance 90-12, the current Land Development Code Section 13-802(b)(1)(e) refers to the vesting/registration process of Ordinance 90-12 in determining if a property is subject to statutory vesting

I acknowledge the issuance of the Florida Department of Environmental Protection's Environmental Resource Permit (ERP) No 02021750991, dated May 13, 1993, for the subject property However, the issuance of permit by a State Agency does not bind nor require the issuance of local zoning or development permits. In addition, the fact that the County did not object to the ERP in 1993 does not provide implicit approval of the required local zoning or development permits

Considering these facts, the Rocking G, Inc. property is not a vested limerock mine pursuant to Section 13-802(b)(1)(e), Sumter County Land Development Code and the proposed use of the property for mining activities must be consistent with the locational requirements of Section 13-772(d)(1), Sumter County Land Development Code, and Policy 7.1.11.1(a), Sumter County Comprehensive Plan – Future Land Use Element.

The following options are available to Rocking G, Inc.:

1 Apply for a Large Scale Comprehensive Plan amendment to amend the Comprehensive Plan to allow for mining on the property and then apply for the Conditional Use Permit and Operating Permit;

2 File an appeal to my vesting determination to the Board of County Commissioners consistent with Section 13-852 and 13-326, Sumter County Land Development Code,

3 Make application to the County for a Conditional Use Permit and Operating Permit for a limerock mine on the property with the understanding that based on the current information staff would not recommend approval due to inconsistency with Section 13-772(d)(1), Sumter County Land Development Code, and Policy 7 1.11 1(a), Sumter County Comprehensive Plan,

4 Complete reclamation of the old limerock pits without "mining" (i e limerock removed only used on site and not sold or transferred); or

5 Abandon pursuit of a limerock mine on the property

Do not hesitate to contact me with any questions or to set up a meeting to further discuss these issues.

Sincerely,

Aimee Webb for Brad Cornelius

Bradley T. Cornelius, AICP
Planning Manager

cc.
Bradley Arnold, County Administrator

wadelaw
JAMES E WADE, III, P.A.

June 21, 2010

Mr. Brad Cornelius, AICP
Planning Manager - Sumter County
910 N. Main St., Suite 301
Bushnell, Florida 33513

Re: Rocking G, Inc.
Reclamation and Reconfiguration Project

Dear Mr Cornelius

I have the pleasure of representing Rocking G, Inc. regarding their rock mine reclamation and reconfiguration project in Sumter County, Florida. My client has successfully obtained the required Environmental Resource Permit, Permit No. 0202175-001 from the Department of Environmental Protection to proceed with the project. Sumter County was provided with required notification during the DEP application process, however a copy of the ERP is attached for your convenience. I have consulted with Tracy Bryant, Principal Consultant, with Florida Communications and Development Group, Inc. (FCDG) regarding certain aspects of this project and the potential for her assistance with this matter. I hereby request a pre-application meeting with you and your staff to discuss proceeding with this reclamation and reconfiguration.

Limerock mining on the subject property began circa 1960 and included the two (2) existing mine pits which are approximately 60 feet in depth and have some shear walls with open access, which are potentially hazardous and obviously do not meet the current reclamation requirements. Since the mining operations predated the current reclamation standards, such reclamation is not required, but my client understands that the excavation of any new areas or mining activities as part of the reclamation project will require compliance with the current standards and agrees to a total reclamation of the entire project area. The proposed project will provide for improving the current condition of the property and eliminate potential dangers as well as provide an opportunity for the utilization of the aggregate resources to defray a substantial portion of the expense associated with the reclamation process and reconfiguration of the two (2) existing mine pits.

A significant issue to be discussed when we meet is whether or not Sumter County will require a conditional use permit (CUP) and approval of an operating permit pursuant to a mining site plan (Operating Permit) regarding this reclamation effort. This project is located in an area designated as agriculture on the Future Land Use Map and is appropriate for approval of such CUP, if required. The documentation for a mining site plan and other pertinent data have all been filed and approved by DEP as part of the ERP approval process. I will be happy to provide you with any documentation you need, but understand that Sumter County was provided with copies of such in the ERP process.

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My client is ready to pursue the reclamation activities, including the excavations between and reconfiguration of the two (2) existing mine pits on the property I believe this project is vested and request that you determine it exempt from further local permitting, however, if additional permitting is required, this project complies with the requirements of Section 12-772(d) (1) Sumter Land Development Code and Policy 7.1.11.1 Sumter County Comprehensive Plan as to location, zoning and FLUM designation. The area of any new excavation or mining activity will be adjacent to, contiguous to and in fact physically in between the two (2) existing mine pits.

The two (2) existing mine pits squarely fit the Florida Statutory definition of existing mine. Pursuant to Florida Statute (F.S.) 378.403(4) " '[E]xisting mine' means any area upon which an operation is being conducted, or has been conducted, on October 1, 1986." Excavation of said pits began circa 1960 so they were in existence and operation prior to Sumter County's first zoning ordinances around 1972, and significantly prior to the adoption of County Comprehensive Plan and other regulations February 3, 1992. Presumably Sumter County will accept the recognition by the State of Florida and DEP that my client's pits are "existing mines" by statutory definition. By contrast the two (2) existing pits clearly are not "new" mines and do not fit the statutory definition in F.S. 378.403 (11) "'[N]ew mine' means any mine that is not an existing mine". It would be illogical to conclude that the two (2) existing mine pits do not exist when they physically do exist. Thus I believe the two (2) existing mine pits are in fact legally vested mines and that the reclamation and reconfiguration project should be determined to be exempt from further local permitting.

There were no objections to the application and approval process of the ERP through DEP, and Sumter County should welcome the opportunity to allow my client to move forward with this project and create some much needed jobs in the current economic climate as well as provide needed construction aggregate material resources for the road building and construction industry of Central Florida.

Therefore, please advise when you and your staff will be available for a pre-application meeting to discuss exemptions or the need for conditional use permit and/or issuance of an operating permit to proceed with this project.

Thank you for your attention and prompt response to my request.

Sincerely,

JAMES E.WADE, III, P.A.

James E. Wade

James E. Wade, III