


September 11, 2023

MEMORANDUM

TO: Honorable Chairman and Members of the Board of County Commissioners

VIA: Jeffrey Rogers, County Administrator
County Administrator's Office

FROM: Cesar Omar DePablo, Senior Planner 
Planning Department

**SUBJECT: Conditional Use Actions by the Planning and Zoning Commission on
September 11, 2023**

For the Board's information, on September 11, 2023, the Planning and Zoning Commission (P&Z) held a duly advertised public hearing to consider an advertised request for a Conditional Use Permit(s). Attached to this memorandum is (are) the staff report(s) and action(s) of the P&Z on the Conditional Use Permit request(s) at that scheduled public hearing.

A notification letter was sent on Wednesday, September 13, 2023, to inform the petitioner(s) of the P&Z action(s). According to Appendix A, Zoning, Article V, Section 4(H) of the Hernando County Code of Ordinances, the Board of County Commissioners, by a majority vote, may decide to review any conditional use permit decision rendered by the P&Z. If at least a majority (three (3) members) of the governing body do not vote to review the P&Z decision within thirty (30) days, which would be Wednesday, October 11, 2023, (calculated from the date of the P&Z decision), the P&Z decision shall be deemed final and subject only to review by the circuit court.

The review of decision by the BCC would occur on the regular BCC hearing date of Tuesday, November 14, 2023, (calculated from the date of the P&Z decision). "Public notice" for this hearing shall mean publication of notice of the time, place and purpose of such hearing one (1) time in a newspaper of general circulation in the county, such publication to be at least five (5) days prior to such hearing, and such notice shall be posted in a conspicuous place or places around such lots, parcels, or tracts of land as may be involved in the hearing. Affidavit proof of the required publication and posting of the notice shall be presented at the hearing.

The Board may affirm, modify or reverse the decision of the P&Z at the hearing.

Copies: Applicant's File

STAFF REPORT

HEARINGS: Planning & Zoning Commission: September 11, 2023

APPLICANT: Lee Pedone

FILE NUMBER: CU-23-07

REQUEST: Conditional Use Permit for Excavation

GENERAL LOCATION: South of Dashback Street and east side of Kettering Road

PARCEL KEY NUMBER: 536254, 424678, 1299115, 424641, 1342666, 396716

APPLICANT'S REQUEST:

On January 13, 2020, the Planning and Zoning Commission approved a Conditional Use permit for Excavation on three (3) parcels totaling 39.0 acres. The petitioner's current request is for a Conditional Use Permit for excavation on six (6) parcels surrounding the initial three (3) tracts. All parcels are separate legal lots and range in size from 59.0 to 10.0 acres (190.0 Total Acres). Excavations are permitted by the County Land Development Regulations through a Conditional Use Permit for up to five (5) years; however, these permits are limited to 40.0 acres. The petitioner's request includes six (6) parcels or excavation to phase the project and avoid multiple applications and permits. No single parcel will exceed the maximum 40.0-acre requirement.

The excavation will be accomplished by front end loader and track mounted excavator. Excavation will extend vertically downward to an approximate elevation of 60'. In no case will excavations extend into clay, limestone or groundwater. Excavated sand material is temporarily stockpiled onsite awaiting sale and transport. There is no washing, screening, classifying or other processing of the excavated materials onsite. The excavation will operate seven (7) days per week. At the current rate of production, the site could possibly operate for 5-10 more years, depending on demand. Approximately 75% of the available material from the middle 20 acre site has been removed. The 10 acre parcels to the north and south remain undisturbed pasture.

Upon completion, the project will be reclaimed to FLUCFCS 183313 Improved Pasture, as follows:

- Land surface shall be stabilized and graded smooth to promote sheet flow of runoff.
- Pre-application of granular fertilizer (15-10-15) at a rate of 300 lb/acre.
- Hydroseeding of grass seed, species to be determined specific to time of year.

SITE CHARACTERISTICS:

Site Size: 152.3 acres

**Surrounding Zoning;
Land Uses:**

North: PDP(IND); Undeveloped
South: AG; Undeveloped
East: AG; Undeveloped
West: CPDP; Undeveloped

Current Zoning:

AG (Agricultural); CPDP(SF and MF)/Combined
Planned Development Project (Single Family
and Multifamily) – approved July 12, 2006

**Future Land Use
Map Designation:**

I-75 Planned Development District

Flood Zone:

C; Small northeast portion within AE flood zone

ENVIRONMENTAL REVIEW:

Soil Type:

Adamsville fine sand and Candler fine sand

**Hydrologic
Features:**

The subject property contains no wetlands or
Special Protection Areas (SPA), according to
County data resources.

**Protection
Features:**

The property is not located within a Wellhead
Protection Area (WHPA) according to County data
resources.

Habitat:

Candler fine sand provides a habitat suitable for gopher
tortoises. Given the presence of the Candler fine soils,
gopher tortoise habitat and several commensal species
have a moderate potential for occurring on the project
site including eastern indigo snake (*Drymarchon
corais*), Florida mouse (*Podomys floridanus*), Florida
pine snake (*Pituophis melanoleucus mugitus*), and
gopher frog (*Rana areolata*). Since there is the potential
for this listed Species of Special Concern to be present,
the site should be inspected prior to construction, and a
Florida Fish and Wildlife Conservation Commission
permit may be required prior to site alterations.

Comments:

A comprehensive wildlife/gopher tortoise survey
shall be conducted in order to identify any listed

species present on the property. A Florida Fish and Wildlife Conservation Commission (FWC) permit may be required prior to site alterations. The petitioner is required to comply with all applicable FWC regulations.

ENGINEERING & TRANSPORTATION REVIEW:

The property is located east of Kettering Road and south of Dashbach Street. Access to the site will be along Kettering Road, south of Dashbach Street, via Ariana Dairy Farm, also owned by the petitioner.

The County Engineer has reviewed the request and indicated the following:

- This property contains 7 areas of flood Zone “AE”, 2 of which are on the perimeter of the site. The proposed approval extends the mine operation into new areas.
- The tracking of soil and debris into the Kettering Road right-of-way is not permitted. The petitioner shall be responsible for providing a system to keep debris from tracking onto the county roadway.
- The developer shall comply with the requirement of the Road Maintenance Agreement, approved by Board of County Commissioners on April 28, 2015. Per the agreement a “Truck Fee” to cover the maintenance and traffic control cost for the excavation operation of \$0.75 per truck load is to be remitted to the County monthly.
- Annually a Certified Public Accountants certificate documenting the accuracy is to be submitted by April 15. To date some payments have been received, however the required CPA certification was last received for 2020. CPA Certification has not been received for 2021, 2022.
- The Road Maintenance Agreement shall be updated to include the additional parcels.

LAND USE REVIEW:

The following parcels are proposed for excavation:

1. Key #536254 = 25.6
2. Key #396716 = 118.5
3. Key #424641 = 59.1
4. Key #424678 = 20.2
5. Key #1342666 = 29.3
6. Key #1299115 = 8.0

Comments: At no time shall any single parcel exceed the maximum requirement of 40.0 acres. Additionally, no parcel shall be paired or phased with a larger parcel in order to achieve 40.0 acres

Buffer

The buffer requirement shall be a minimum of one hundred (100) feet measured perpendicular from the property line. Where required, the buffer shall shield adjoining properties when viewed from the property line. The buffer must shield the operation at the time excavation begins. Shielding shall meet an eighty percent (80%) opacity standard. Berms, towers, stockpiles and other similar items which extend above the buffer need not be shielded. The clearing and stripping of vegetation from the land shall not require the pre-establishment of a buffer. If approved, the petitioner must meet the minimum buffering requirements of the County's LDRs.

The excavation of the site will have to comply with the County's LDRs relating to excavation. The standards address the provision of screening (vegetative or berm), hours of operation, fugitive dust control, reclamation, etc.

A conditional use permit is intended to be used as a special permit which temporarily allows uses not otherwise permitted by the ordinance. The Commission has the ability to grant a conditional use permit for a period up to five (5) years.

NOTICE OF APPLICANT RESPONSIBILITY:

The conditional use permit process is a land use determination and does not constitute a permit for either construction, or use of, the property, or a Certificate of Concurrency. Prior to use of, or construction on, the property, the petitioner must receive approval from the appropriate County department(s) for the proposed use.

The granting of this land use determination does not protect the owner from civil liability for recorded deed restrictions which may exceed any county land use ordinances. Homeowners associations or architectural review committees require submission of plans for review and approval. The applicant for this land use request should contact the local association or the Public Records for all restrictions applicable to this property.

STAFF RECOMMENDATIONS:

It is recommended that the Planning and Zoning Commission approve the Conditional Use Permit for Excavation for a period of five (5) years with the following conditions:

1. The petitioner must obtain all permits from Hernando County and other applicable agencies and meet all applicable land development regulations, for either construction or use of the property, and complete all applicable development review processes.
2. If a clay lens is encountered during the excavation operation, the petitioner must modify the Excavation Permit to review the new elevation of the excavation bottom.
3. The petitioner must maintain a valid SWFWMD permit prior to the issuance of the Excavation Permit.

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4. A minimum 100' buffer/setback shall be provided along the perimeter of the excavation site. Any buffer/setback that has been encroached upon by the mining operation shall be restored in accordance with County regulations. Where required, the buffer shall shield adjoining properties when viewed from the property line. The buffer shall shield the operation at the time excavation begins.
5. No excavation shall commence until such time the petitioner applies and is approved for an Excavation Permit.
6. The developer shall comply with the requirements of the Road Maintenance Agreement approved by the Board of County Commissioners on April 28, 2015. Per the agreement a 'truck fee' to cover the maintenance and traffic control cost for the excavation operation of \$0.75 per truck load is to be remitted to the County monthly.
7. The petitioner shall provide an annual certification from a Certified Public Accountant documenting the accuracy of the Road Maintenance Agreement fees.
8. The petitioner shall not utilize Dashbach Street for access.
9. At no time shall any single parcel exceed the maximum requirement of 40.0 acres.
10. The petitioner shall coordinate with the Hernando County Planning Division to ensure no gopher tortoises have re-entered the excavation site.

P&Z ACTION:

On September 11, 2023, the Planning and Zoning Commission voted 5-0 to approve the request for a Conditional Use Permit for Excavation for a period of five (5) years with the following modified performance conditions:

1. The petitioner must obtain all permits from Hernando County and other applicable agencies and meet all applicable land development regulations, for either construction or use of the property, and complete all applicable development review processes.
2. If a clay lens is encountered during the excavation operation, the petitioner must modify the Excavation Permit to review the new elevation of the excavation bottom.
3. The petitioner must maintain a valid SWFWMD permit prior to the issuance of the Excavation Permit.
4. A minimum 100' buffer/setback shall be provided along the perimeter of the excavation site. Any buffer/setback that has been encroached upon by the mining operation shall be restored in accordance with County regulations. Where required, the buffer shall shield adjoining properties when viewed from the property line. The buffer shall shield the operation at the time excavation begins.
5. No excavation shall commence until such time the petitioner applies and is approved for an Excavation Permit.
6. The developer shall comply with the requirements of the Road Maintenance Agreement approved by the Board of County Commissioners on April 28, 2015. Per the agreement a 'truck fee' to cover the maintenance and traffic control cost for the excavation operation of \$0.75 per truck load is to be remitted to the County monthly.
7. The petitioner shall provide an annual certification from a Certified Public Accountant documenting the accuracy of the Road Maintenance Agreement fees.
8. The petitioner shall not utilize Dashbach Street for access.
9. At no time shall any single parcel exceed the maximum requirement of 40.0 acres.
10. The petitioner shall coordinate with the Hernando County Planning Division to ensure no gopher tortoises have re-entered the excavation site.
11. The Conditional Use Permit for Excavation shall expire on January 13, 2025.
12. The petitioner shall provide a plan for the control of fugitive dust.

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13. The petitioner shall be required to install native floral/fauna along those portions of the property adjacent to existing homes, within 30 days of the Special Exception Use permit approval.

STAFF REPORT

HEARINGS: Planning & Zoning Commission: September 11, 2023

APPLICANT: M. Daniel Construction, Inc.

FILE NUMBER: CU-23-01

REQUEST: Conditional Use Permit for Excavation

GENERAL LOCATION: West side of Sunshine Grove Road, approximately 2,000' north of Ken Austin Parkway

PARCEL KEY NUMBER: 344354

APPLICANT'S REQUEST:

The petitioner is requesting a Conditional Use Permit for the Excavation of a 40.0-acre parcel. The petitioner has indicated sand excavation will be accomplished via front-end loader and/or track-mounted excavator. Excavation will extend downward vertically until clay or limestone is encountered but not to exceed the 100-foot contour. An elevation benchmark will be established on the edge of the project excavation that will be used to monitor the depth of mining. Excavated sand material will be stockpiled temporarily on-site awaiting sale and transport off site. There will be no washing, screening, classifying or other processing of the excavated materials on site.

SITE CHARACTERISTICS:

Site Size: 40.0 acre portion (150.1 acres)

**Surrounding Zoning;
Land Uses:**

North:	Mining; Undeveloped
South:	AG; High, Middle and Elementary School Campus
East:	AG; Single Family, Mobile Homes
West:	AG; Single Family, Mobile Homes

Current Zoning: AG/(Agricultural)

**Future Land Use
Map Designation:** Rural

ENVIRONMENTAL REVIEW:

Soil Type: Candler fine sand

Hydrologic Features: The subject property contains no wetlands or Special Protection Areas (SPA) according to County data resources.

Protection Features: The property is not located within a Wellhead Protection Area (WHPA) according to County data resources.

Habitat: Candler fine sand provides a habitat suitable for gopher tortoises. Given the presence of the candler fine soils, gopher tortoise habitat and several commensal species have a moderate potential for occurring on the project site including eastern indigo snake (*Drymarchon corais*), Florida mouse (*Podomys floridanus*), Florida pine snake (*Pituophis melanoleucus mugitus*), and gopher frog (*Rana areolata*). Since there is the potential for this listed Species of Special Concern to be present, the site should be inspected prior to excavation, and a Florida Fish and Wildlife Conservation Commission permit may be required prior to site alterations.

Comments: A comprehensive wildlife/gopher tortoise survey shall be conducted in order to identify any listed species present on the property. A Florida Fish and Wildlife Conservation Commission (FWC) permit may be required prior to site alterations. The petitioner is required to comply with all applicable FWC regulations.

Excavation may create an environment for nuisance exotic vegetative species to begin to grow in the disturbed areas. The petitioner must provide acceptable control measures to contain and eliminate any nuisance species.

UTILITIES REVIEW:

The Utilities Department has indicated they currently do not supply water or sewer services to this parcel. Services are not available to this parcel. Well and septic are the responsibility of the property owner.

ENGINEERING & TRANSPORT REVIEW:

The site is located on the west side of Sunshine Grove Road, approximately 2,000' north of Ken Austin Parkway. The petitioner has indicated utilizing the existing access points for the project; furthermore, the existing roadway network is capable of accommodating the expansion, and no upgrades to signals or roadway network will be necessary due to the site's proposed traffic volume. The County Engineer has reviewed the request and indicated the following:

- The existing site is internally drained and has a permitted retention pond. No new impervious area is being added, no permit modification by Southwest Florida Water Management District.
- Explain how the Florida Department of Environmental Protection permit is incorporated into the expansion.
- Applicant to provide documentation that supports narrative statement that the existing roadway network is capable of accommodating the expansion, and that there will not be upgrades to signals or additional truck volume added to roadway networks.

LAND USE REVIEW:

Excavations are permitted by the County LDRs by Conditional Use Permit; however, excavations are limited to 40.0 acres. Furthermore, the excavation must comply with the County's LDRs relating to excavation. The standards address the provision of screening (vegetative or berm), hours of operation, fugitive dust control, reclamation, etc.

The following minimum setbacks from the permittee property line shall be maintained for adjacent property uses:

Excavation and Stockpiles:

North (undeveloped mining):	100'
East (residential lots greater than 2 acres):	100'
West (residential lots greater than 2 acres):	100'
South (School Campus):	200'

As part of the excavation permitting process, the petitioner must provide a reclamation plan addressing the following:

1. Contouring or other suitable land-shaping techniques to enhance side slope stabilization and control erosion during reclamation so that adjoining properties are not affected. Slopes shall not exceed 3:1.
2. A revegetation plan to provide twenty (20) percent of the area under permit will be retained or re-established with native vegetation that existed on the site prior to the excavation activity. The distribution of the twenty (20) percent vegetation on the site will be determined during the review of the reclamation plan.
3. If water bodies are created, a littoral zone shall be established.
4. Engineers estimate for cost of reclamation.
5. A time schedule and description of the proposed reclamation.

Comment: The petitioner has not indicated reclamation provisions for the C&D Landfill. If approved, the petitioner shall be subject to the minimum reclamation requirements of the County LDR's. This shall include but not be limited to grading, contouring, and seeding and/or sodding disturbed areas.

The buffer requirement shall be a minimum of one hundred (100) feet measured perpendicular from the property line. Where required, the buffer shall shield adjoining

properties when viewed from the property line. The buffer must shield the operation at the time excavation begins. Shielding shall meet an 80% opacity standard. Berms, towers, stockpiles, and other similar items which extend above the buffer need not be shielded. The clearing and stripping of vegetation from the land shall not require the pre-establishment of a buffer.

Comment: The petitioner has indicated providing the minimum buffer requirements of the County LDR's.

As part of the excavation permitting process, the petitioner must submit a plan for the control of fugitive dust.

Comment: The petitioner has not indicated dust control measures for the subject site. If approved, the petitioner shall implement dust control measures for stockpiles, truck movement and excavation equipment by watering methods or industry BMP's.

A conditional use permit is intended to be used as a special permit which temporarily allows uses not otherwise permitted by the ordinance. The Commission has the ability to grant a conditional use permit for a period up to five (5) years.

NOTICE OF APPLICANT RESPONSIBILITY:

The conditional use permit process is a land use determination and does not constitute a permit for either construction, or use of, the property, or a Certificate of Concurrence. Prior to use of, or construction on, the property, the petitioner must receive approval from the appropriate County department(s) for the proposed use.

The granting of this land use determination does not protect the owner from civil liability for recorded deed restrictions which may exceed any county land use ordinances. Homeowners associations or architectural review committees require submission of plans for review and approval. The applicant for this land use request should contact the local association or the Public Records for all restrictions applicable to this property.

STAFF RECOMMENDATION:

It is recommended that the Planning and Zoning Commission approve the request for a Conditional Use Permit for Excavation for a period of five (5) years with the following conditions:

1. The petitioner must obtain all permits from Hernando County and other applicable agencies and meet all applicable land development regulations, for either construction or use of the property, and complete all applicable development review processes.
2. If a clay lens is encountered during the excavation permit operation, the petitioner shall modify the Excavation Permit to permit the new elevation of the excavation bottom.

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3. Minimum buffer for excavation shall be 100' along the perimeter of the excavation site. All buffers that have been encroached upon by the excavation operation shall be restored in accordance with County regulations.
4. Excavation shall not commence until such time the petitioner applies for and is approved for an Excavation Permit through Hernando County Development Services.
5. The petitioner shall provide an updated Florida Department of Environmental Protection permit for the expansion.
6. The petitioner shall provide documentation to the County Engineer, indicating the existing roadway network is capable of accommodating the expansion, and that there will not be upgrades to signals or additional truck volume added to roadway networks.
7. The petitioner shall meet the stormwater permitting requirements of the SWFWMD and comply with the Hernando County Facility Design Guidelines.
8. A comprehensive wildlife/gopher tortoise survey shall be conducted in order to identify any listed species present on the property.
9. The petitioner shall provide a Reclamation Bond prior to the issuance of an excavation permit.
10. The petitioner shall provide acceptable control measures to contain and eliminate any nuisance vegetative species.
11. Geotechnical subsurface testing and reporting in accordance with the County's Facility Design Guidelines shall be conducted prior to the issuance of an excavation permit.
12. The following minimum setbacks from the permittee property line shall be maintained for adjacent property uses:
Excavation and Stockpiles:
North: 100'
East: 100'
West: 100'
South: 200'
13. No onsite processing of materials, washing, screening or classifying shall be permitted.
14. The petitioner shall provide a plan for the control of fugitive dust.
15. The Conditional Use Permit for Excavation shall expire on September 11, 2027.

P&Z ACTION:

The Planning and Zoning Commission voted 5-0 to approve the Conditional Use Permit for Excavation for a period of three (3) years with the following modified performance conditions:

1. The petitioner must obtain all permits from Hernando County and other applicable agencies and meet all applicable land development regulations, for either construction or use of the property, and complete all applicable development review processes.
2. If a clay lens is encountered during the excavation permit operation, the petitioner shall modify the Excavation Permit to permit the new elevation of the excavation bottom.
3. Minimum buffer for excavation shall be 100' along the perimeter of the excavation site. All buffers that have been encroached upon by the excavation operation shall be restored in accordance with County regulations.
4. Excavation shall not commence until such time the petitioner applies for and is approved for an Excavation Permit through Hernando County Development Services.
5. The petitioner shall provide an updated Florida Department of Environmental Protection permit for the expansion.
6. The petitioner shall provide documentation to the County Engineer, indicating the existing roadway network is capable of accommodating the expansion, and that there will not be upgrades to signals or additional truck volume added to roadway networks.
7. The petitioner shall meet the stormwater permitting requirements of the SWFWMD and comply with the Hernando County Facility Design Guidelines.
8. A comprehensive wildlife/gopher tortoise survey shall be conducted in order to identify any listed species present on the property.
9. The petitioner shall provide a Reclamation Bond prior to the issuance of an excavation permit.
10. The petitioner shall provide acceptable control measures to contain and eliminate any nuisance vegetative species.
11. Geotechnical subsurface testing and reporting in accordance with the County's Facility Design Guidelines shall be conducted prior to the issuance of an excavation permit.

12. The following minimum setbacks from the permittee property line shall be maintained for adjacent property uses:
Excavation and Stockpiles:
North: 100'
East: 100'
West: 100'
South: 200'
13. No onsite processing of materials, washing, screening or classifying shall be permitted.
14. The petitioner shall provide a plan for the control of fugitive dust.
15. The Conditional Use Permit for Excavation shall expire on September 11, 2027
2026.
16. A buffer shall be provided along the north, south and east portions of the excavation site. Any buffer that has been encroached upon by the excavation operation shall be restored in accordance with County regulations. Where required, the buffer shall shield adjoining properties when viewed from the property line. The buffer shall shield the operation at the time excavation begins.