

RESOLUTION NO. R-2008- 0930

RESOLUTION APPROVING ZONING APPLICATION CA-2007-1199
(CONTROL NO. 2007-346)
CLASS A CONDITIONAL USE
APPLICATION OF BERGERON SAND, ROCK & AGGREGATES, INC
BY JON E SCHMIDT & ASSOCIATES, AGENT
(BERGERON SAND ROCK ANDAGGREGATE)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider applications relating to zoning; and

WHEREAS, the Board of County Commissioners, pursuant to Article 2 (Development Review Process) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067, as amended) is authorized and empowered to consider, approve, approve with conditions or deny Class A Conditional Uses; and

WHEREAS, the notice and hearing requirements, as provided for in Article 2 of the Palm Beach County Unified Land Development Code have been satisfied; and

WHEREAS, Zoning Application CA-2007-1199 was presented to the Board of County Commissioners at a public hearing conducted on May 22, 2008; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the applicant and other interested parties, the recommendations of the various county review agencies, and the recommendations of the Zoning Commission; and

WHEREAS, this approval is subject to Article 2.E (Monitoring) of the Palm Beach County Unified Land Development Code (ULDC) and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners has considered the findings in the staff report and the following findings of fact:

1. This Class A Conditional Use is consistent with the purposes, goals, objectives and policies of the Palm Beach County Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.
2. This Class A Conditional Use complies with relevant and appropriate portions of Article 4.B (Supplementary Use Standards) of the Palm Beach County Unified Land Development Code. This Class A Conditional Use also meets applicable local land development regulations. This Class A Conditional Use, with conditions as adopted, complies with standards imposed on it by all other applicable provisions of the Palm Beach County Unified Land Development Code for use, layout, function, and general development characteristics.
3. This Class A Conditional Use, with conditions as adopted, is compatible as defined in the Palm Beach County Unified Land Development Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.
4. The proposed design, with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

5. This Class A Conditional Use, with conditions as adopted, minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.
6. This Class A Conditional Use, with conditions as adopted, will result in logical, timely and orderly development patterns.
7. This Class A Conditional Use, with conditions as adopted, is consistent with applicable Neighborhood Plans.
8. This Class A Conditional Use has a concurrency determination and complies with Article 2.F (Concurrency - Adequate Public Facility Standards) of the ULDC.
9. The applicant has demonstrated sufficient justification that there are changed circumstances, which would require the Class A Conditional Use.

WHEREAS, Article 2.A.1.K.3.b (Action by BCC) of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application CA-2007-1199, the application of Bergeron Sand, Rock & Aggregates, Inc, by Jon E Schmidt & Associates, agent, for A Class A Conditional Use to allow a TYPE IIIB excavation in the Agricultural Production (AP) District, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on May 22, 2008, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Robert Kanjian moved for the approval of the Resolution.

The motion was seconded by Commissioner Santamaria and, upon being put to a vote, the vote was as follows:

Addie L. Greene, Chairperson	¥	Absent
Jeff Koons, Vice Chair	¥	Aye
Karen T. Marcus	¥	Aye
Robert J. Kanjian	¥	Aye
Mary McCarty	¥	Absent
Burt Aaronson	¥	Aye
Jess R. Santamaria	¥	

The Chairperson thereupon declared that the resolution was duly passed and adopted on May 22, 2008.

Filed with the Clerk of the Board of County Commissioners on 20th day of June, 2008.

This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

BY:


COUNTY ATTORNEY

SHARON R. BOCK,
CLERK & COMPTROLLER

BY:


DEPUTY CLERK



EXHIBIT A

LEGAL DESCRIPTION

BOUNDARY SURVEY

A parcel of land located in portions of Sections 31 and 32, Township 45 South, Range 37 East, Palm Beach County, Florida.

Commencing at the southwest corner of said Section 31; thence N 00°-05'-58" E along the west boundary line of said Section 31 a distance of 37.00 feet to the Point of Beginning of this description; thence continuing N 00°-05'-58" E along the said west boundary line of Section 31 a distance of 5207.27 feet to the northwest corner of said Section 31; thence N 89°-30'-19" E along the North boundary line of said Section 31 a distance of 2902.59 feet to an intersection with the southwesterly boundary of the right-of-way of State Road No. 25 (U.S. 27); thence S 35°-03'-47" E along said right-of-way boundary line of State Road No. 25, being 100.00 feet, more or less, southwesterly of an as measured at right angle from the center line of existing pavement, a distance of 4182.53 feet to an intersection with the easterly boundary line of said Section 31; thence continuing S 35°-03'-47" E along the said right-of-way boundary line a distance of 2216.06 feet to an intersection with a line parallel to and 37.00 feet, as measured at right angle, north of the south boundary line of said Section 32; thence N 89°-58'-15" W along said line 37.00 feet north of and parallel to the south boundary line of Section 32 a distance of 1306.13 feet to an intersection with the west boundary line of said Section 32; thence N 89°-57'-09" W along a line 37.00 feet north, as measured at right angle and parallel to the south boundary line of said Section 31 a distance of 5281.25 feet to the Point of Beginning of this description.

LESS that parcel of land in indenture between Florida Ranch Enterprises, Inc. and American Telephone and Telegraph Company and described in Official Records Book 903, Pages 990 and 991.

and

LESS and except those certain parcels of land conveyed to the State of Florida Department of Transportation by deed recorded in Official Records Book 7560, Page 701.

Containing 552.97 Acres more or less.

EXHIBIT B
VICINITY SKETCH

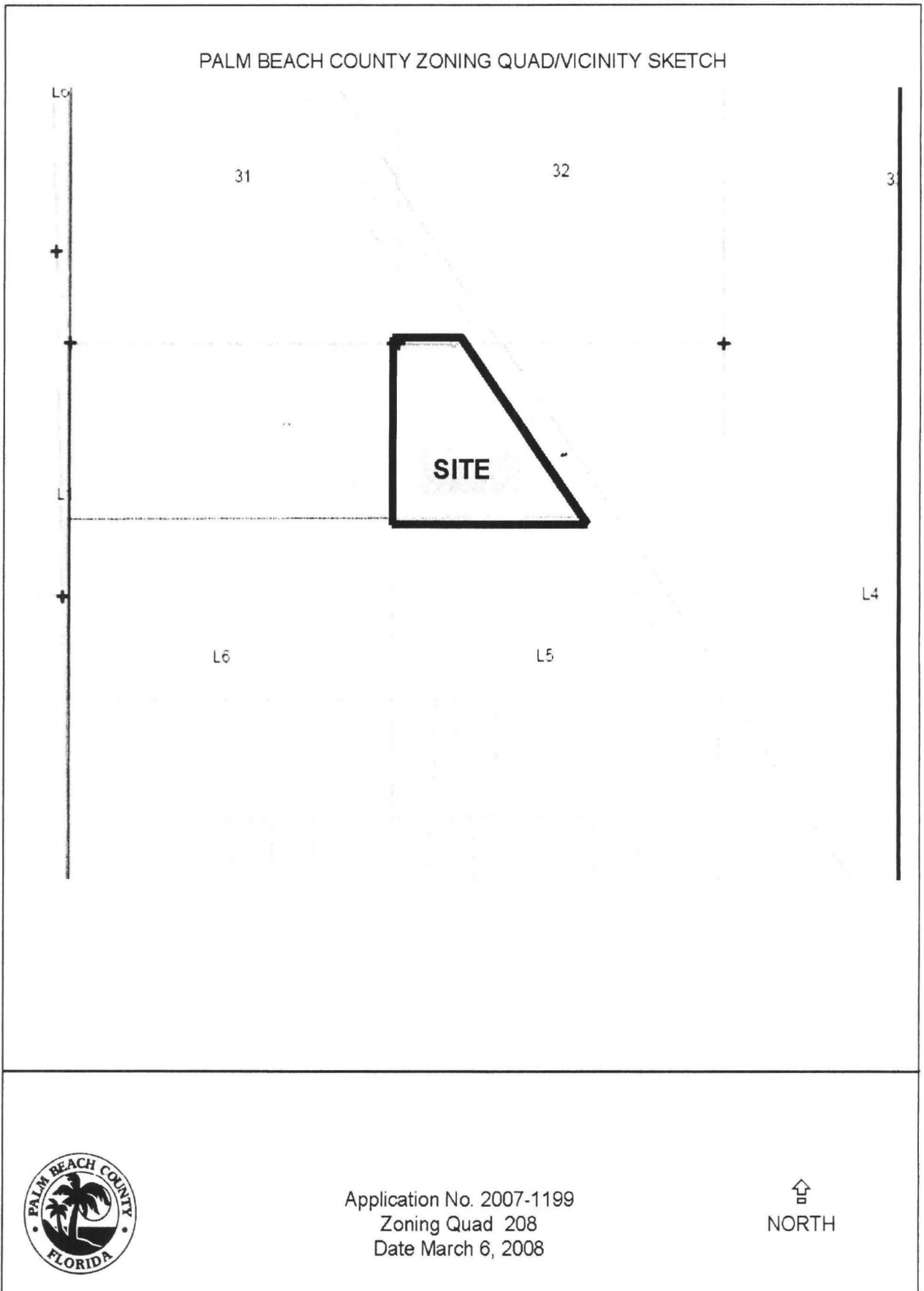


EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. Development of the site is limited to the site design approved by the Board of County Commissioners. The approved site plan is dated April 30, 2008 and depicts the 552.97 acre site. All modifications must be approved by the Board of County Commissioners or Zoning Commission unless the site plan is modified to meet conditions of approval or in accordance with Article 2. of the ULDC. (DRO: ZONING - Zoning)
2. Reconfiguration of the site plan necessary to comply with State or Federal permitting requirements shall be permitted subject to DRO approval. (DRO: ZONING - Zoning)

ACCESS

1. The site shall be limited to three (3) vehicular access points on to US Hwy 27, 2 for the use of excavation and one for the existing agricultural uses. (ONGOING: CODE ENF - Zoning)

BLASTING

1. The property owner shall comply with the following blasting regulations:

BLASTING REGULATIONS
Method of Extraction

METHOD	IMPACT
Processing of material	At identified Rock Plant Sites pursuant to DEP Lime Rock Processing Permit
Storage of material	On site pursuant to plans
Hauling operation	24 Hours 7 Days a week
Time of blast	Between 10 am 5 pm daily, excluding Saturday, Sunday and legal holidays
Blasting schedule	Subject to State Fire Marshall standards
Established noise and vibration	Subject to State Fire Marshall standards
Compatibility study by consultant	Study required if applicable. All required setbacks and separation provided as required by ULDC. (ONGOING: CODE ENF - Zoning)
2.	No blast shall be detonated within the required separation areas set forth in the ULDC. (ONGOING: CODE ENF - Zoning)

DRI

1. No subphase shall exceed one-hundred (100) acres of land per year. (ONGOING: CODE ENF- Zoning)

ENGINEERING

1. The Property owner shall construct a right turn lane north approach on US 27 at the projects middle entrance as shown on the current site plan. Note: The north entrance into the site is restricted for allowed agricultural uses. The construction of the required right turn lane shall be concurrent with the use of the entrance as a concrete or asphalt plant. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way.
 - a) Permits required from the Florida Department of Transportation for the construction of the proposed right turn lane north approach on US 27 at the projects middle entrance shall be obtained prior to the issuance of the first Building Permit for the proposed concrete or asphalt plant. (BLDG PERMIT: Monitoring-Eng)
 - b) Construction shall be completed prior to the issuance of the first Certificate of Occupancy concrete or asphalt plant. (CO: MONITORING-Eng)
2. The projects middle entrance shall not be used for the removal of excavated material until the property owner has constructed a right turn lane north approach on US 27 at the projects middle entrance . Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way. (ONGOING: ENGINEERING-Eng)

All permitting and construction for the required right turn lane shall be completed prior to the use of the entrance for the removal of excavated material. (ONGOING: ENGINEERING-Eng)
3. The Developer shall install warning signs on U.S. 27 as warranted, as determined by the County Engineer. (ONGOING: ENGINEERING-Eng)

ENVIRONMENTAL

1. The property owner shall report to the Environmental Resources Management on January 31, 2009 and on an annual basis verifying that there will be no off site discharge from the property during a 25 year, three day storm event, either during or post construction into adjacent canal system. (DATE: ERM -ERM)
2. Prior to final approval by the Development Review Officer (DRO), the property owner shall obtain an Environmental Resource Permit from the Florida Department of Environmental Protection. (DRO: ERM-ERM)
3. If the proposed excavation exceeds the depth standards of Article 4.D, the property owner shall provide request for a waiver pursuant to the requirements of Article 4.D.9 of the Unified Land Development Code prior to final approval by the Development Review Officer. (DRO: ERM-ERM)
4. During the Notice of Intent to Construct (NIC) application process, the operator shall provide a Chloride Monitoring Plan acceptable to ERM that includes exploratory monitoring, monitoring for lakes, and daily monitoring during construction.
 - a. Should chloride levels exceed 250 ppm in any one sample during exploratory monitoring, the operator shall submit to ERM within 30 days for review and approval, a plan to address the exceedance. The Chloride Management Plan may include increased monitoring prior to excavation to isolate areas with exceedances, not mining in the affected cell, not mining certain areas previously approved for mining or not mining certain areas to the depth previously approved.

- b. As part of the Notice of Intent to Construct Approval (NIC), the operator is to monitor each lake to ensure that chlorides do not exceed 250 ppm. In the event that the monitoring data for the lake as evaluated by a mixing analysis, exceeds 250 ppm, the operator shall submit for ERM's review and approval within 30 days a remediation plan for the affected lake. The mixing analysis is to provide for reasonable assurances and shall be based on a protocol acceptable to ERM. Possible remedial actions may include, but is not limited to, additional monitoring at new locations, more frequent monitoring, and restrictions on mining depth or on mining locations, cessation of mining in the affected lake or suspension or revocation of the NIC with restoration. The remediation plan shall include provisions for lowering the chloride level in the affected cell and/or isolating the affected cell from surface and subsurface movement of chlorides. (ONGOING: ERM-ERM)
5. A natural resource extraction fee is to be provided yearly for this mining operation from the operators of this mine or its successors. The basis for the extraction fee is calculated at \$.05 per ton of material sold from the mine. The tonnage will be calculated at the end of each calendar year with the information provided to ERM by January 31 of the succeeding year with the payment of \$.05 per ton provided by February 15.

To receive these funds, ERM will set up a separate account for natural resource extraction fees. The funds will be used for environmental enhancement activities which include, but are not limited to:

 - a. Purchase land; restore land to a more natural state; and, enhance the flora and fauna of already preserved natural areas.
 - b. The natural resources extraction fee shall escalate annually at the rate prescribed by Section 373.41492(5) as amended, of the Florida Statutes. In the event the legislature of the State of Florida or the County imposes, by legislation, ordinance, or other means, an extraction fee, tax, or charge, then this natural resources extraction fee shall be reduced by the same amount. (ONGOING: MONITORING-ERM)
6. The property owner shall report to Environmental Resources Management prior to DRO site plan certification verifying the complete separation of the farm field agricultural activities from the industrial mining/ excavation activities. (DRO:ERM-ERM)
7. If the DEP permit is not issued within 3 years (May 1, 2011) of the BCC approval the application shall be scheduled for a BCC hearing for consideration. (DATE: MONITORING/ERM-ERM)
8. One year prior to the final phase which begins at the 660 foot setback the property owner shall meet with the applicable agencies and provide a written confirmation that this project will or will not be part of the CERP or other applicable water restoration projects. (ONGOING:ERM- Zoning)

HEALTH

1. Prior to the issuance of the first building permit, the property owner shall apply for and obtain an onsite sewage treatment and disposal system (OSTDS) permit. (BLDG PERMIT: MONITORING-Health)
2. Prior to the issuance of the first building permit, the property owner shall apply for and obtain an onsite potable water supply system permit. (BLDG PERMIT: MONITORING-Health)

LANDSCAPE – STANDARD

1. Prior to the issuance of a building permit, the property owner shall submit a Landscape Plan or an Alternative Landscape Plan to the Landscape Section for review and approval. The Plan shall be prepared in compliance with all landscape related conditions of approval as contained herein. (BLDG PERMIT: LANDSCAPE - Zoning)

LANDSCAPING- ANCILLARY USE PARCELS

2. Prior to Building permit approval, landscaping along the property lines for the total 21.54 acre Asphalt Batch Plant and Concrete Batch Plant ancillary use parcel (for portions not affected by the right of way landscape buffer conditions.)

Landscape buffer width along the above referenced parcels, except where other more restrictive conditions apply, shall be upgraded to include:

- a. A minimum ten (10) foot wide compatibility landscape buffer strip. No width reduction or easement encroachment shall be permitted
- b. One (1) palm or pine for each for each thirty (30) linear feet of the property line with a maximum spacing of sixty (60) feet between clusters.
- c. Perimeter landscaping shall be installed prior to the building permit approval for the ancillary parcels. (BLDG PERMIT: LANDSCAPE - Zoning)

LANDSCAPING ALONG THE EAST PROPERTY LINE (FRONTAGE OF SR 25 US 27)

2. In addition to code requirements, landscaping along the east property line abutting State Road 25/US27 shall be upgraded to include:
 - a. A minimum fifty (50) foot wide right-of-way landscape buffer strip. No width reduction or easement encroachment shall be permitted;
 - b. Canopy trees planted fifteen (15) feet on center with fifty (50) percent of the trees
 - c. a minimum fourteen (14) feet high;
 - d. and native hedge material planted in a meandering and naturalistic pattern to be installed and maintained a minimum of eight (8) feet in height; and
 - e. The landscape buffer shall be installed within one year of commencement of excavation activity. (BLDG PERMIT: LANDSCAPE - Zoning)

MONITORING

1. The Excavation Activity Monitoring Report required by Section 7.6.H.5.a. of the ULDC shall be submitted to the Zoning Division and Environmental Resources Management Department on or before April 1 annually. (DATE: ZONING/ERM - Zoning)
2. The property owner shall submit a five (5) year monitoring report in a form determined by the Zoning Director on April 1, 2013. The report shall record the last five (5) year site activities. The Zoning Director shall schedule an Administrative Inquiry to the Board of County Commissioners (BCC) to discuss ongoing status of the project to ensure consistency with the BCC's approval. (DATE: MONITORING - Zoning)

3. The Maintenance and Monitoring Report of Reclaimed Areas required by Article 4.D.8.E of the ULDC shall be submitted to the Environmental Resources Management Division starting on April 1, 2009 and submitted annually thereafter until completion of the excavation activity and reclamation of the site. The report shall include an "as built" survey for the lake being excavated at the same scale as the approved site plan, delineating the excavation boundaries of the excavaton for the current year and previous year activity to verify compliance with the DRI Thresholds and Mining Phasing Plan. (DATE: MONITORING - ERM/Zoning)

PLANNING/MONITORING

4. Should any archaeological artifacts be uncovered during development or soil disturbing activity, excavation shall halt, the County Archaeologist contacted and allowed to comment on the significance of the find as provided for in Article 9 of the ULDC. (ONGOING: PLANNING-Planning)
5. Prior to issuance of building permits or commencement of excavation activities, the property owner shall provide a copy of the SFWMD, ACOE and DEP permits associated with the proposed mining activities. (BLDGPERMIT: PLANNING-Planning)
6. Starting April 1, 2009, and every year thereafter, the property owner shall submit an annual report to the Planning Director and Development Review Officer (DRO) that shall demonstrate compliance with the requirements of Future land Use Element (FLUE) Policy2.3-e.3 regarding permitted mining and excavation activities within the Agricultural Production (AP) Future land Use (FLU) designation. The document shall contain the following:
 - a) Status of each phase of the operation.
 - b) Total tonnage removed from the site and associated tonnage fee paid to ERM.
 - c) Documentation as to the intended use of the material complies with the County requirements, such as but not limited to the quarry's status with FDOT and other usages for the mined aggregate.
 - d) Status of compliance with conditions contained within Resolution
 - e) Status of compliance with SFWMD and DEP permits. Copies of all modifications to permits shall be submitted in their entirety to PBC Planning, Land Development and ERM.
 - f) Status of eligibility for the mined areas to be utilized for Water Management or ecosystem restoration purposes with a letter from each corresponding agency discussing eligibility or any executed binding agreements pertaining to the reclaimed mined areas future proposed uses. (ONGOING: PLANNING-Planning)
7. Upon completion of each phase submit the following documents where applicable:
 - a) Should the reclaimed mined area be used for agricultural activities associated with flood control or irrigation submit an executed binding agreement, or other such documentation as approved by the County Attorney's office, between the property owner and the lessee describing how the use of the area will be for agricultural purposes and submit a copy of the modified SFWMD Water Resource Permit demonstrating the use of the area for agricultural activities associated with flood control and or irrigation.

- b) Should the mined reclamation area be used, with consent of the property owner, for water management projects associated with ecosystem restoration, regional water supply, flood protection or other such projects in direct association with the SFWMD, ACOE, DEP or other applicable governmental agency, submit either a copy of an executed binding agreement with the subsequent agency illustrating the use of the reclaimed areas within the proposed project or a copy of the deed transferring the reclaimed area to the subsequent agency. (ONGOING: MONITORING-Planning)
8. Should any permits associated with the requested mining operations be found in violation, revoked, suspended or otherwise nullified, the county shall be notified within 15 working days. Should compliance not be achieved or a consent/settlement agreement not be executed within 120 working days of notification, the Development Order shall be brought to the Board of County Commissioners for further review at which time they may require operations to cease or take other appropriate action. (ONGOING-MONITORING-Planning)

SIGNS

1. Freestanding point of purchase signs fronting on SR 25/ USHwy 27 shall be limited as follows:
 - a. Maximum sign height, measured from finished grade to highest point - ten (10) feet;
 - b. Maximum sign face area per side - 100 square feet;
 - c. Maximum number of signs - one (1); and
 - d. Style - monument style only. (CO: BLDG - Zoning)

USE LIMITATIONS

1. All uses shall not exceed 50 dBA as measured in the Performance standards of Article 5.E.3. of the ULDC. Noise shall be measured from the residential property line closest to the area under excavation. (ONGOING: CODE ENF - Zoning)
2. The final phases of excavation shall be located along the property's SR 25/US 27 frontage. These final phases shall be a minimum of 600 feet in depth from the ultimate right-of-way line of SR 25/US 27 and shall remain in agricultural production until time of excavation, less the right-of-way buffer. (DRO: Zoning – Building)
3. The accessory asphalt and concrete batch plant shall be setback a minimum of 600 feet from the ultimate right-of-way line of SR 25/US 27. (DRO: Zoning – Building)
 - a. Stock piles of rock or other material shall not exceed a maximum height of one hundred (100) feet or the height permitted in the ULDC, as may be amended from time to time for a Type IIIB Excavation, whichever is lower, from the undisturbed average finished grade. (ONGOING: CODE ENF - Zoning)

COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Zoning Commission for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)

2. Failure to comply with any of the conditions of approval for the subject property at any time may result in:
 - a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or
 - b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
 - c. A requirement of the development to conform with the standards of the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
 - d. Referral to code enforcement; and/or
 - e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or a Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Article 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

Staff may be directed by the Executive Director of PZ&B or a Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Article 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

Departmental administrative actions made pursuant to this condition may be appealed as provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Circuit Court, Appellate Division, 15th Judicial Circuit of Florida. (ONGOING: MONITORING - Zoning)

This resolution is effective when filed with the Clerk of the Board of County Commissioners.