

DEVELOPMENT REVIEW REPORT

The matter before the Planning Commission is a special exception use application (SE 2018-06) to allow within the Agricultural 10 (A-10) zoning district agriculturally related processing on a vacant and un-platted 196.34-acre property located on the south side of State Road 72 about 1.42 miles southwest of State Road 70, Arcadia, Florida. The application is before the Planning Commission because agriculturally related processing uses are special exception uses in the A-10 zoning district and Land Development Regulations (LDR) Section 20-1439 requires the Planning Commission to hold at least one public hearing with due public notice on a special exception use application, and to make and forward their recommendation on the application to the Board of County Commissioners. *The Development Director recommends the Development Review Report and all other competent substantial evidence presented at the hearing be entered into the record, that the findings and conclusions contained herein be adopted, and that the Planning Commission forward the record to the Board of County Commissioners with a recommendation that the resolution approving with conditions the special exception use application (SE 2018-06) be adopted.*

I. BACKGROUND

On May 8th, 2000, Owens Enterprises, Inc. purchased five contiguous properties totaling 261.34+ acres located on the south side of State Road 72 and across from the Peace River Citrus Products facility. On October 20th, 2015, Nuco Citrus, LLC (NUCO), a limited liability corporation with their principal place of address being Delray Beach, Florida, was registered with the Florida Division of Corporations. Recently, NUCO entered into an option to purchase and sale agreement with Owen Enterprises, Inc. for 196.34-acres, which includes four properties and 78-acres of the 143-acre fifth property.

On December 3rd, 2018, the Development Department received on behalf of NUCO a special exception use application (SE 2018-06) and fee to develop a citrus byproduct

processing facility with office building and related improvements on the 196.34-acre site (See Attachment A). On January 22nd, 2019 the application was revised by providing a letter responding to the Department's draft staff report (See Attachment A). The citrus byproduct processing facility will be a \$115+ million state-of-the-art facility designed to transform citrus peel into higher value by-products, such as pectin, essential oils, flavonoids, and similar products. Presently, the United States lacks any citrus byproduct facility that manufactures pectin and, if approved, this facility would be the first of its kind. The SEU application states the agriculturally related processing use would operate 24 hours per day, seven days per week, and 365 days per year. Concurrent with the special exception use (SEU) application, a Development Plan application (DP 2018-14) and fee was filed with the Development Department.

An aerial photograph showing the combined property boundaries and the relationship of the combined properties to the surround land uses and roadway network shows the property has an irregular shape with significant frontage along the south side of State Road 72 and located across the street of the Peace River Citrus, Inc. plant, which will be one of many citrus peel suppliers for the facility (See Attachment B).

DeSoto County was selected for this project because it is a primary citrus production area and is also within close proximity to Florida's other areas of citrus production. The United States is one of the top orange producers in the world accounting for about 10% of the world's production. And the state of Florida accounts for 70% of the United States' production. Since transportation accounts for a considerable share of the total manufacturing costs, proximity of the plant to the raw material suppliers is a key driver of production cost. NUCO's plant location adjacent to the Peace River Citrus facility was selected to mitigate transportation costs - both in the collection of wet peel from local citrus industry and also in the distribution of the final end products. It is also critical that peel is obtained and processed expeditiously to ensure that pectin quantity and quality is maintained. As the only American pectin plant, NUCO will be able to respond to a significant portion of the United States' pectin needs, decreasing our reliance on foreign imports and reducing costs to the end users. Moreover, as opposed to sites along US 17 and SR 70 which do not all have access to a service gas pipeline, a 4" service gas pipeline is located along SR-72 and is available to serve the site.

In addition to the Property's proximity to the major citrus producers, it is also located within 175 miles of three major commercial ports: Miami, Tampa, and Fort Lauderdale, and at the intersection of four major highways and part of the CSX Commercial Rail network. Proximity to these transportation facilities will allow NUCO to position itself to be a major supplier to other countries that have significant demand for these products. Currently, Europe represents the largest market for pectin, accounting for 36.6% of the global consumption.

The Interim 2040 Future Land Use Map shows the combined properties are located within the Rural/Agricultural designation (See Attachment C), which designation is intended primarily for agricultural, pastoral, and rural residential development. The Official Zoning District Atlas shows the property is situated within the Agricultural 10 (A-

10) zoning district (See Attachment D), which zoning district allows agriculturally related processing uses as a special exception use (See Attachment E).

The initial issue to be addressed is whether a citrus byproduct processing plant can be interpreted to be an agriculturally related use. Land Development Regulations (LDR) Section 20-3(c) empowers the Director of Development to be responsible for interpretation. Responsibility for interpretation by the Director is limited to standards, regulations, and requirements of the LDR; such responsibility is not construed to include interpretation of any technical codes adopted by reference. Interpretations must be based on and be consistent with the LDRs, and do not include waivers of specific LDR requirements, standards or regulations, unless specifically authorized in these LDRs. Further, responsibility for interpretation shall not be construed to substitute for any rights or responsibilities assigned to any commission, board, or official named in other sections of the LDR. The officials shall rely upon policies adopted in the County Comprehensive Plan in making any such interpretation.

The Development Director finds that neither the Comprehensive Plan nor the LDR defines the term “agriculturally related processing” use. Notwithstanding, the Law Insider Dictionary defines the term “Agriculturally related industry” as “those industrial uses directly related to the packaging, processing, storage, or physical or chemical alteration of the agricultural product. Such industries include, but are not limited to: cold storage plants, controlled atmosphere, produce packing and processing facilities, wineries and their accessory uses such as tasting and sales rooms.” The Development Director finds that the citrus byproduct processing facility provides for the physical or chemical alteration of citrus peels, as well as packaging, processing, and storage.

The Development Director further finds that Florida Statutes Chapter 581 pertains to the plant industry. Florida Statutes Section 581.011(7) defines citrus as “all plants, plant parts, and plant products, including seed and the fruit, of all genera, species, and varieties of the Rutaceous subfamilies Aurantioideae, Rutoideae, and Toddalioideae, unless specifically excluded by the rules of the department. Florida Statutes Section 581.011(27) defines “Plants and plant products” as “trees, shrubs, vines, forage and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from them, unless specifically excluded by the rules of the department.” Based on the above, the Development Director concludes the citrus byproduct processing facility is an agriculturally related processing use because the definition of citrus includes plant parts, plant parts includes fruits and all products made from them, and the fruit includes the peel, and the peel is physically or chemically altered to produce a citrus byproduct.

As an aside, it should be noted that in lieu of a special exception use application, a rezoning application to Industrial Light (IL) could have been pursued. The advantage to the County in the special exception use process is that the Board can impose conditions on the application, which conditions would be prohibited should a rezoning to the IL zoning district had been pursued.

A second issue concerns the citrus byproducts manufacturing process. The Applicant's response to the staff report includes a narrative and exhibit to help explain the manufacturing process (See Attachment A) and staff has provided a conceptual oblique aerial drawing to help visualize the proposed development (See Attachment F). Dr. Domenico Marchese is the design development consultant. Dr. Marchese brings over 30 years of experience in the Citrus Processing industry, with specialization in Pectin processing. He has held senior management positions with numerous citrus processing companies including FMC, IFT and Ortogel in addition to serving as a university professor in Food Processing Engineering. As the managing director of OPERA Consulting, Dr. Marchese supports design development for the facility, focusing on the optimization of Pectin quality and co-product production while minimizing waste.

The citrus product is delivered by truck from a juice plant to the site. The best citrus peel is one that is fresh and the proposed location of the citrus byproduct processing facility proximate to the Peace River Citrus Products facility not only ensures a "fresh" product but significantly reduces truck traffic on the roadways, reduces travel time, and reduces carbon emissions. Upon entering the site the truck stops at a scale/security station, where the product is weighed and where only authorized vehicles are allowed to enter. The truck proceeds south and to the west side of the Peeling Washing / Drying area depicted on the attachment in green as Area WBS 00. A hydraulic tilt dumper will be used (similar to Peace River Citrus). The truck dump hopper will be enclosed on three sides (with roof) to minimize noise from the operation. Once the product is within Area WBS 00, the wet peel is shredded and washed for the removal of soluble solids. The shredded will be housed within the peel prep building, which will be constructed with precast concrete insulated wall panels. The shredder will discharge directly into an enclosed vertical wash tank. Noise and odor generated from the shredding process will be abated by the wash vessels and building structure.

Washing is performed using a three-stage counter-current washing and pressing process. The washing process will be conducted using a series of agitated vertical vessels which are located within the Peel Prep Building (Area WBS 00), which will be constructed using precast concrete insulated wall panels. Noise generated from the washing process will be abated by the vessels and building structure. The pressing process will consist of two stages of screw presses located within the Peel Prep Building (Area WBS 00), which will be constructed using precast concrete insulated wall panels. Noise generated from the screw presses will be abated by the building structure. Wash water ("dirty water") is pumped to Area WBS 40 for essential oil and bio-flavonoid extraction and further evaporation to citrus molasses. Additionally, FDEP will require a full design and operations report to be submitted with NUCO's Industrial Wastewater Permit application. Washed wet peel will be conveyed to either the hydrolysis units for batch reaction and Pectin production or the wet peel shaking fluidized bed dryer/cooler and stored on-site for use outside of harvest season. The hydrolysis reaction will produce pectin juice which is further refined in Area WBS 20 and Area WMS 30. No waste products are produced directly from the reaction process. Conveyance to reaction or the dryer will be by screw pumps located within the Peel Prep Building (Area WBS 00), which will be constructed using precast concrete

insulated wall panels. Noise generated from the pumps will be abated by the building structure. The wet peel dryer will use natural gas as a heat source. Particulate emissions from the dryer are controlled using two stages of cyclone separation. The wet peel dryer will be located within the peel prep building, which will be constructed using precast concrete insulated wall panels. Noise generated from the pumps will be abated by the building structure. Additionally, fan intakes will be equipped with noise attenuators to minimize noise to the surrounding environment.

The narrative continues by noting the dried peel will be pneumatically conveyed from the dryer to six (6) dry peel storage silos shown in red as WBS 10 - Dry Peel Conveying and Storage. Dried peel will be pneumatically conveyed to and from the dry peel storage silos. Pneumatic conveying blowers will include silences and will be located in sound enclosures to minimize noise to the surrounding environment. The dry peel storage silos will be sized to store a total of 5,100 tons of peel to allow for continued operations outside of local orange harvest season.

The next step of pectin production involves the Reaction and Separation stage which occurs within the purple area shown as WBS 20 - Reaction Section and Separation. The Nuco Citrus facility will utilize a solution of Nitric Acid and water to optimize extraction of pectin from the peel. Nitric acid is an extremely corrosive acid capable of causing severe chemical burns very rapidly. If nitric acid mists are inhaled, health risks include corrosion of mucous membranes, delayed pulmonary edema, and even death. Contact with eyes can cause permanent cornea damage. In addition, if ingested, nitric acid can produce severe, rapid corrosive burns of the mouth, throat and gastrointestinal tract. This chemical can also react violently with certain compounds such as metallic powders and turpentine, and is a strong oxidizer capable of causing fires if it comes in contact with organic material. Nitric acid will be stored outdoors in two vertical storage tanks. The tanks will be located within a secondary, concrete containment basin. Nitric acid will be recovered in the depectinized steam drying process and reused in the process.

After the extraction process is completed, pectin juice is transferred to a series of decanters, centrifuges, and a filter press for clarification and removal of depectinized waste solids. Depectinized waste solids will be dried in a steam drier pneumatically conveyed to the Co-Product Processing area for storage and pelletizing for animal feed offtake. The steam dryer will be a closed loop system. Waste (saturated) steam from the dryer will be reused for heating water used in the reaction process. Additionally, the emissions will be regulated as part of the FDEP Air Construction Permit application.

Pectin juice from the separation process is sent to the Pectin Precipitation and Drying area shown in green as WBS 30 but shown in yellow in the legend. In this process the pectin solution is first purified with using clarifying columns, then concentrated in the Pectin Evaporator, and finally mixed with Isopropyl Alcohol (IPA) to begin precipitating/separating the pectin from the solution into a gel form. The pectin gel is separated from the solution using a series of decanters and screw press filters and transferred to a dryer to reduce moisture content for long term storage. Any potential

IPA emissions from the precipitation building will be contained within the Pectin Precipitation building, which will be constructed using precast concrete insulated wall panels. The building HVAC system will include a dedicated exhaust with scrubber to capture and control IPA emissions into the atmosphere. The dried pectin is blended with sucrose to a required specification, and bagged into 1-ton supersacks.

Several high-value co-products will be produced at the facility utilizing waste from the pectin process. This process occurs in the area shown in blue as WBS 40 - Co-Product Processing and Recovery. Peel wash water from Area WBS 00 is pumped to Area WBS 40, Co-Product Recovery. Cold Pressed Citrus Oil is separated from the peel washing liquor with a series of centrifuges. The peel washing liquor then passes through multiple treatment processes, including pasteurization, enzymation, decanting and centrifugation for solids removal, and reverse osmosis. The washing liquor next goes through an adsorption and bio-flavonoid recovery process. Bio-flavonoids captured in the adsorption process are transferred to the Ethanol distillation column and The Cloudy Juice is finally passed through the Cloudy Juice Evaporator and concentrated to citrus molasses quality and stored outdoors in tanks. The Citrus molasses may be combined with depectinized peel before pelletizing and/or sold directly in liquid form.

Bio-flavonoid powder and dried/standardized pectin created in WBS 40 will be stored in 1-ton supersacks. Supersacks will be transported by fork and stored on nestable racks in the Dry Product Storage Warehouse shown in dark grey as WBS 50 Final Product Storage.

Within WBS 60 - Chemical Storage and Recovery, shown in light grey, the ethanol, isopropanol and nitric acid used in the process are to be recovered and reused to the greatest extent possible. Nitric acid recovered from the depectinized peel nitric acid stripper will be pumped to vertical containment vessels located in WBS 60. The following equipment will be utilized for chemical recovery:

- IPA distillation
- Ethanol distillation
- Nitric Acid Stripper (w/ Depectinized Peel Dryer)

WBS 70 – Wastewater, shown in yellow, is where the process wastewater treatment (WWT) equipment will be located. The scope of work will likely include an aeration pond and clarifiers for sludge removal. The WWT system will be designed to maintain effluent quality within Florida DEP regulations for discharge onto onsite spray fields. The spray field design is currently in development but the finalized spray field system will be designed and operated to meet FDEP requirements. The existing agricultural fields immediately east of the development area have been reserved for land application of the liquids generated by the wastewater treatment process. The land application process is typical of what would normally be expected in an agricultural area and will be regulated by the FDEP.

The electrical distribution equipment required for powering equipment and facility infrastructure will be located in area WBS 80 – Electrical Infrastructure, shown in red.

The electrical infrastructure is similar to any other industrial electrical connection and would not be expected to be a generator of significant noise. Electrical distribution equipment will be located within the Electrical/Control building and process buildings, which will be constructed using precast concrete insulated wall panels. Noise generated from the wet peel dryer will be abated by the building structure. An emergency generator will be located on site and utilized only in emergency circumstances where electrical power to the facility is interrupted. The generator will operate off natural gas and will be located within a noise abating structure.

The balance of the facility is shown in blue as WBS 90. The facility balance of plant includes general process equipment required for the operation. These systems include:

- Well Water System – Raw water from onsite wells will be used for process, potable, and fire water;
- Water Treatment System – Raw water will be treated using water filtration systems (clarifiers, RO, etc.) for demineralization and use in the process;
- Fire Protection / Fire Alarm – The aboveground raw water holding tank will be sized to supply water to the fire water / sprinkler systems as required by code;
- Compressed Air System – Air compressors will be used to meet equipment and instrument air requirements;
- Chiller System – A glycol-based chiller system will be used to meet low-temperature process and infrastructure cooling requirements;
- Cooling Tower System – A cooling tower will be used to meet higher temperature process and cooling requirements;
- Packaged Boiler System – A packaged steam boiler will be used to supply steam to a variety of equipment in the process. Although the boiler generates emissions that are regulated by the FDEP, it is anticipated that the plant emissions will require only a minor source air construction and operations permit from the FDEP. The packaged boiler system will be located in a sound enclosure to minimize noise. The boiler will run off natural gas and will meet state and federal air emission standards.
- Septic System – An on-site septic system will be used for treating sewage from the facilities (non-process waste)

Finally, the administrative offices are shown in blue as displayed as WBS 100 – Office Building (Administrative offices).

A third issue is that NUCO is the local, regional and national economic benefits and liabilities associated with such a facility. Pectin and citrus byproducts are part of a growing global market that aims to address the increasing consumer demand for health promoting foods. The United States is the largest importer of pectin in the world and there is a need for a domestic citrus pectin plants. Further, NUCO intends to partner with Florida based orange processors, growers' cooperatives and local farmers to secure the necessary raw materials providing an additional revenue stream to the Florida citrus industry, helping to stabilize the local citrus industry while creating over 100 new full-time jobs, and increasing the tax base with its \$115+ million facility.

Notwithstanding, as the first development of its kind in the United States, staff has no way to compare this facility against others in order to mitigate any reasonably foreseeable land use incompatibilities or liabilities. Thus, the Development Director recommends additional conditions be imposed which are discussed under the factor pertaining to detrimental intrusion into the surrounding area.

II. PROPOSED RESOLUTION

Attachment G is a Resolution granting to Nuco Citrus, LLC a development order approving with conditions a special exception use application (SE 2018-06) to allow within the Agricultural 10 (A-10) zoning district an agriculturally related processing use on a vacant and unplatted 196.36-acre property generally located on the south side of State Road 72 about 1.4 miles from its intersection with State Road 70, the Property Identification Numbers being 33-37-24-0000-0520-0000, 34-37-24-0000-0183-0000, 34-37-24-0000-0160-0000, 34-37-24-0000-0182-0000 and a portion of 33-37-24-0000-0010-0000, and the legal description and sketch being provided in Exhibit 1; incorporating the whereas clauses; incorporating the Development Review Report; and providing an effective date.

III. DATA & ANALYSIS

The Applicant has the burden of proof to demonstrate on the record and through competent substantial evidence that the application conforms to the LDR requirements for rezoning applications. Competent substantial evidence can be interpreted as evidence that:

- is legally sound (sufficient and admissible under the rules of evidence, although it doesn't have to comply with courtroom formality);
- is real (non-speculative, non-hypothetical) and based on facts (more than conjecture, unsupported generalized statements, surmise, mere probabilities, guesses, whims, or caprices);
- is reliable (credible, believable);
- is material (pertinent, relevant);
- tends to prove the points (facts, elements, standards) that must be proven (not just create a suspicion or could equally support another result);
- establishes a reasonable, substantial justification (basis of fact) for the point argued; and
- a reasonable mind would accept it as enough (adequate) to support the argued for conclusion.

Land Development Regulations (LDR) Article XI, Division 5 requires all special exceptions use applications to be reviewed according to the procedures and requirements in that Division. LDR Section 20-1431 provides that a special exception use is a use that would not be appropriate generally or without restriction throughout a particular zoning district or classification, but which, if controlled as to number, area,

location or relation to the neighborhood, would promote the public health, safety, welfare, order, comfort, convenience, appearance or prosperity. The land uses allowed through the special exception use process are listed in LDR Article II, Zoning District and Requirements.

A. Staff review. LDR Section 20-1432 addresses staff review.

1. *Section 20-1432(a) provides that upon receipt of an application for Special Exception, the Development Director shall determine whether the application is complete. The Development Director may waive some or all of the plans required by Section 20-1431(1) if the Special Exception includes only a change in use without any new construction. If the application is complete, it will be accepted for review. If the application is incomplete, the Development Director shall specify in writing the additional information required in order for the application to be processed. No further action shall be taken on the application until the additional information is submitted and determined to be complete.*

On December 3rd, 2018, the Development Department received from Applicant Gordon “Mac” Martin a SEU application and fee. The SEU application included:

- a. November 28, 2018 Golder & Associates, Inc. transmittal letter;
- b. Attachment 1, Application for Development Plan;
- c. Attachment 2, Application for Development Plan & General Information;
- d. Attachment 3, Application for Special Exception and November 20th, 2018 Justification Statement;
- e. Attachment 4, Proof of Property Ownership/Owners Agent;
- f. Attachment 5, Development Plan; and
- g. Attachment 6, Legal Description and Sketch.

The documents listed above are incorporated herein by reference.

By letter dated December 10th, 2018, the Applicant was informed the Development Plan application but not the special exception use application was incomplete.

On December 14th, 2018, the Development Department received via e-mail a revised SEU application which included the following documents:

- h. December 13 , 2018 Golder & Associates, Inc. transmittal letter;
- i. Attachment 1, Application for Development Plan;
- j. Attachment 2a, Development Plan application;
- k. Attachment 2b, General Development Order application;
- l. Attachment 3, Application for Special Exception

- m. December 13th, 2018 Justification Statement;
- n. Attachment 4, Proof of Property Ownership/Owners Agent;
- o. Attachment 5, Development Plan; and
- p. Attachment 6, Legal Description and Sketch.

The December 13, 2018 Golder transmittal letter and Attachments 1, 2b, 4, 5, and 6 are incorporated herein by reference and Attachments 3, 5 and the December 13th, 2018 justification letter is included herein as Development Review Report Attachment A.

By e-mail dated December 15th, 2018, a draft staff report was provided to the Applicant. By letter dated December 19th, 2018 a traffic statement was provided and by letter dated January 22nd, 2019, a response to the draft staff report was received, both documents which is interpreted to be an application amendment and is included within Attachment A.

- 2. *Section 20-1432(b) states that after receipt of a complete application, the Development Director shall distribute the application for review by County staff and/or the Development Review Committee.*

The Development Director caused the application to be distributed to Development Review Committee members and their comments are included in Attachment H.

- 3. *Section 20-1432(c) provides that upon completion of review, the Development Department shall prepare a staff report and schedule review of the application by the Planning Commission.*

This Development Review Report is the staff report required by Section 120-1432(c)a draft copy was provided to the Applicant for review and comment on December 15th, 2018. Upon timely receipt of Applicant comments, the final report will be issued on or before January 29th, 2019 and the application is scheduled for the February 5th, 2019 Planning Commission meeting. The application also is scheduled for the February 12th, 2019 Board of County Commissioners public hearing agenda.

- B. Application requirements.** LDR Section 20-1431 provides that a special exception use application shall be submitted indicating the basis in this LDR under which the special exception use is sought and stating the grounds upon which it is requested, with particular reference to the types of findings which the Planning Commission must make as described below. The application must include material necessary to demonstrate that the approval of the special exception use will be in harmony with the LDRs general intent and purpose, not be injurious to the neighborhood or to adjoining properties, or otherwise detrimental to the public welfare. Such material includes, but is not limited to, the following, where applicable:

1. *Plans at an appropriate scale showing proposed placement of structures on the property, provisions for ingress and egress, off-street parking and off-street loading areas, refuse and services areas, and required yards and other open spaces.*
 - a. Placement of structures. The LDR defines a structure as “anything constructed or erected which requires a fixed location on the ground, or in the ground, or attached to something having a fixed location on or in the ground.” A Development Plan application has been filed concurrent with this special exception use application and it displays the placement of structures (See Attachment I). The Development Plan displays a 137,300 square foot citrus byproduct processing facility with 5,070 square foot office building and related improvements. The facility proposes to operate 24 hours per day, seven days per week, and 365 days per year. The Development Plan staff memorandum addresses any deficiencies in the placement of structures. Based on the above, it is concluded the application is **in conformance** with this requirement **provided** the following conditions are imposed:
 - ***A 137,300 SQUARE FOOT CITRUS BYPRODUCT PROCESSING FACILITY WITH 5,070 SQUARE FOOT OFFICE BUILDING AND RELATED IMPROVEMENTS IS APPROVED TO BE LOCATED ON A 196.36-ACRE VACANT AND UN-PLATTED PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF STATE ROAD 72 ABOUT 1.4 MILES FROM ITS INTERSECTION WITH STATE ROAD 70. THE DEVELOPMENT DIRECTOR MAY ADMINISTRATIVE ALLOW AN ADDITIONAL 10 PERCENT INCREASE IN THE SIZE OF EACH LAND USE DURING THE INITIAL IMPROVEMENT PLAN PROCESS; OTHERWISE, A NEW DEVELOPMENT PLAN APPROVAL IS REQUIRED.***
 - ***THE CITRUS BYPRODUCT PROCESSING FACILITY WITH OFFICE BUILDING AND RELATED IMPROVEMENTS SHALL BE ALLOWED TO OPERATE 24 HOURS PER DAY, SEVEN DAYS PER WEEK, AND 365 DAYS PER YEAR.***
 - b. Provisions for ingress and egress. The Development Plan displays two accessways onto State Road 72 and a more detailed discussion of ingress and egress is addressed in Section III.C of this report.
 - c. Off-street parking. The Development Plan displays an off-street parking area serving the office building and a more detailed

examination of off-street parking issues is addressed in Section III.C of this report.

- d. Off-street loading. The Development Plan displays off-street loading areas and a more detailed analysis of off-street loading issues is addressed in Section III.C of this report.
- e. Refuse and service areas. The Development Plan does not display any refuse and service areas and a more detailed discussion of refuse and service area issues is addressed in Section III.C of this report
- f. Required yards and open space. LDR Section 20-126(2)(c) provides that in the A-10 zoning district, a minimum 50 feet front, 50 rear and 30 foot side yard setback is required for principal and accessory buildings and structures. The Development Director finds the principal building is **in conformance** with the minimum setback requirements.

2. *Plans showing proposed locations for utilities hook-up.*

The Development Plan shows the location of on-site water treatment, storage and wastewater treatment facilities, and electrical building facilities. Thus, it is concluded the application is **in conformance** with this requirement provided the following condition is imposed:

- ***THE WASTEWATER TREATMENT SYSTEM SHALL BE DESIGNED AND OPERATED TO MAINTAIN EFFLUENT QUALITY CONSISTENT WITH FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION LAWS AND REGULATIONS FOR DISCHARGE ONTO ONSITE SPRAY FIELDS.***

3. *Plans for screening and buffering with reference as to type, dimensions and characters.*

The application does not provide any plans for perimeter screening and buffering and LDR Section 20-600 does not require any perimeter screening and buffering when an agricultural use abuts other land uses. The application proposes parking area screening consistent with LDR requirements. Thus, it is concluded the application is **in conformance** with this requirement.

4. *Plans for proposed landscaping and provisions for trees.*

Although the application does not provide any plans for proposed landscaping and the provision for trees, the Development Plan proposes to retain the existing landscaping and trees within the required minimum

50' front setback area along State Road 72. LDR Section 20-598(1) encourages the preservation and protection of existing native species of plant material and the use of drought-resistant plants and horticultural methods. The application states it will maintain the existing vegetation to assist in serving as a buffer. Thus, it is concluded the application is **in conformance** with this requirement **provided** the following condition is imposed:

- ***EXCEPT FOR THE AREAS WHERE THE ACCESSWAYS ARE PROPOSED TO BE DEVELOPED, THE EXISTING LANDSCAPING FRONTING ALONG STATE ROAD 72 SHALL BE RETAINED TO A MINIMUM DEPTH OF 50' CONSISTENT WITH THE REQUIRED MINIMUM 50' FRONT SETBACK.***

5. *Plans for proposed signs and lighting, including type, dimensions and character.*

The SEU application states a sign will be placed at the entrance of the property and that applicable outdoor lighting and security will be provided. Although the LDR requires the sign and lighting type, dimensions and character be identified, it is the Development Director's opinion that these details are best addressed during the Improvement Plan and not special exception use review process. Based on the above, it is concluded the application is **in conformance** with this requirement **provided** the following condition is imposed:

- ***THE IMPROVEMENT PLAN SHALL IDENTIFY THE TYPE, DIMENSIONS AND CHARACTER OF SIGNS AND LIGHTING AND SUCH SIGNS AND LIGHTING SHALL BE COMPATIBLE AND IN HARMONY WITH OTHER PROXIMATE PROPERTIES.***

In addition to the above-five described factors, LDR Section 20-1431 also provides that a SEU application address two additional factors.

6. *Where the LDR places additional requirements on specific Special Exception Uses, the application should demonstrate that such requirements are met.*

The LDR does not impose any additional requirement on agriculturally related processing. Thus, this requirement is **inapplicable**.

7. *Where the rezoning of land, as well as the granting of a Special Exception Use, is requested simultaneously for the same parcel of land, both applications may be processed concurrently in accordance with the procedures set forth in Section 12500.*

An Official Zoning District Atlas amendment (i.e., a rezoning) is not being

requested with this special exception use application. Thus, this requirement is **inapplicable**.

C. Planning Commission findings. LDR Section 20-1433 provides that before any special exception use shall be recommended for approval to the Board of County Commissioners, the Planning Commission shall make a written finding that the granting of the special exception use will not adversely affect the public interest, that the specific requirements governing the individual special exception use, if any, have been met by the applicant, and that satisfactory provisions and arrangements have been made concerning twelve (12) matters, where applicable. These 12 matters and staff's evaluation of conformance with these matters is addressed below.

1. *Compliance with all elements of the Comprehensive Plan.*

Future Land Use Element

The Interim 2040 Future Land Use Map shows the subject property is located within the Rural/Agriculture (See Attachment C). Future Land Use Element (FLUE) Objective 1.3 and its implementing policies address the Rural/Agricultural category (See Attachment J).

Objective 1.3: Rural/Agricultural Land Use Category Defined. The intent of the Rural Land Use Category is primarily agricultural, pastoral, and rural residential development. This district is designed to accommodate traditional agricultural uses and conservatory measures, where appropriate, while protecting the rural areas of the County. The intent of this category is to permit a reasonable use of the property, at a gross density of no more than one dwelling per ten (10) acres. At the same time, the intent is to prevent the creation of conditions, which would endanger, damage, or destroy the agricultural base of the County, the environmental resources of the County, the potable water supply and the wild life resources. The first priority of this category is agricultural use.

MEASURABLE TARGET: Total acres taken out of Rural/Agricultural Land Use category.

Consistency analysis: A citrus byproduct processing facility with office building and related improvements is being proposed and that land use can be classified as an agriculturally related processing use because the land use involves the processing of citrus peels and its conversion into pectin and other citrus byproducts. Based on the above, it is concluded the application is **consistent** with FLUE Objective 1.3.

FLUE Policy 1.3.1: The primary use and function of the Rural/Agricultural areas, as designated on the Future Land Use Map, shall be to protect and

encourage agricultural activities and to protect unique native habitats and maintain open space, while providing for rural residential uses.

Consistency analysis: The proposed agriculturally related processing use is an agricultural activity that is encouraged by this policy. Thus, it is concluded the application is **consistent** with FLUE Policy 1.3.1.

FLUE Policy 1.3.2: Agricultural uses, as defined by F.S. 193.461, are permitted within the Rural/Agricultural category. Additional setbacks are required for intense uses when adjacent to non-agricultural future land use categories and zoning districts.

Consistency analysis: The proposed use is an agricultural use and, therefore, is **consistent** with FLUE Policy 1.3.2.

FLUE Policy 1.3.3: Residential development in a Rural/Agricultural area shall not exceed a maximum density of one dwelling unit per 10 gross acres, unless otherwise provided herein.

Consistency analysis: Residential development is not proposed and, therefore, FLUE Policy 1.3.3 is **inapplicable**.

FLUE Policy 1.3.4: The rezoning of lands to industrial may be allowed within the Rural/Agricultural category, only when permitted by the Board of County Commissioners in conjunction with approval for a Special Exception or Planned Unit Development. Any Industrial use shall be buffered and spaced appropriately to minimize potential impacts on adjacent agricultural and residential uses. The following minimum standards shall apply:

- (1) A minimum of 80 acres;
- (2) Shall be no less than 5 miles from another Industrial zoning district if non-contiguous;
- (3) Shall be appropriately buffered from agricultural and residential uses and zoning districts;
- (4) Maximum Floor Area Ratio of 0.7;
- (5) Shall submit and receive site plan or preliminary plat (PUD) approval in conjunction with such zoning request;
- (6) Exclude electrical generating facilities (power plants)

Consistency analysis: This application is not for a rezoning and, therefore, is **inapplicable**.

FLUE Policy 1.3.5: Property rezoned to Industrial is intended for uses of a nature not permitted within an urban center, new community, or other non-industrial area. Those uses include:

- (1) Sales and service of trucks and heavy equipment;

- (2) Wholesale establishments, warehousing, bulk storage;
- (3) Asphalt and cement plants, saw mills;
- (4) Railroad siding;
- (5) Manufacturing, warehousing, storing, processing, canning, packing, slaughter houses, marinas, commercial boat houses, commercial boat storage, boat building, boat yards;
- (6) Storage of agricultural vehicles not used on subject property for agricultural purposes;
- (7) In and outdoor firing range
- (8) Sale and repair of new & used automobiles, motorcycles, trucks & tractors, mobile homes, boats, automotive vehicle parts & accessories, heavy machinery & equipment, farm equipment, retail establishments for sale of farm supplies;
- (9) Bulk storage yards, not including bulk storage of flammable liquids, subject to the provisions of the County or State Fire Codes;
- (10) And other similar uses

Consistency analysis: This application is not for a rezoning and, therefore, is **inapplicable**.

FLUE Policy 1.3.6: In a Rural/Agricultural Future Land Use category, the lowest order of commercial goods and services which serve the daily needs of nearby residents, may be permitted with direct access on an arterial roadway. Commercial areas in a Rural/Agricultural category shall:

- (1) Not exceed 3 acres in size;
- (2) Shall not exceed impervious surface ratio (lot coverage) of 70 percent;
- (3) Shall be no less than 10 miles from other commercial development in a Rural/Agricultural area or in other Future Land Use categories;
- (4) Shall be appropriately buffered from agricultural and residential uses and zoning districts;
- (5) Must submit and receive site plan or preliminary plat (PUD) approval in conjunction with such zoning request.

Consistency analysis: This application is not for a commercial use and, therefore, is **inapplicable**.

FLUE Policy 1.3.7: Based on the previous adopted Comprehensive Plan and negotiations with the Department of Community Affairs, a portion of the area west of the river previously designated with a future land use category of Rural Residential (one dwelling unit per five acres) shall be recognized within the West River Study Area designation. Land within the area may apply for zoning consistent with the previously designated Rural Residential. The intent of the Study Area is to cluster development around and in support of the nearby Urban Center. This area will be studied consistent with other policies within this plan.

Consistency analysis: The FLUE Map Series also shows the subject property is located within the West River Study Area (See Attachment K). The Development Director concludes this policy is **inapplicable** because the proposed development is an agricultural use and the policy address residential uses.

FLUE Policy 1.3.8: Phosphate mining/extraction and related land uses are allowed in the Rural/Agriculture land use category only when the area is included in the Generalized Phosphate Mining Overlay Designation and in accordance with the Generalized Phosphate Mining Overlay Designation objective and policies, as well as other policies within the Future Land Use Element and Conservation Element which apply to phosphate mining activity.

Consistency analysis: This application is not for phosphate mining and, therefore, is **inapplicable**.

FLUE Policy 1.1.2 provides the maximum allowable non-residential intensity is a 0.4 floor area ratio.

Consistency analysis: Based on a size of 196.36-acres (8,552,570 square feet) and the maximum allowable intensity of 0.4 floor area ratio, the property could accommodate up to 3,421,028 square feet of development. Based upon the project size of 19.2-acres and the maximum allowable intensity, up to 334,540.8 square feet of development is allowed.

The Development Plan (See Attachment I) displays a summary of impervious surface which shows the size of the buildings/process totals 142,370 square feet of space. Thus, the application is **consistent** with the maximum allowable non-residential intensity requirements of FLUE Policy. Notwithstanding, the Improvement Plan should include a table displaying the size and land use for each building. Thus, it is recommended the following condition be imposed:

- ***THE IMPROVEMENT PLAN SHALL INCLUDE A TABLE DISPLAYING THE PROPOSED USES WITHIN EACH BUILDING, THE SIZE IN SQUARE FEET FOR EACH USE WITHIN EACH BUILDING, AND THE TOTAL CUMULATIVE SIZE OF ALL USES AND ALL BUILDINGS WITHIN THE DEVELOPMENT. UP TO A 10 PERCENT INCREASE SHALL BE ALLOWED WITH THE DEVELOPMENT DIRECTOR'S REVIEW AND APPROVAL.***

FLUE Policy 1.22.2: Preliminary Development Orders. Submittal for approval of preliminary development order, which does not establish binding densities and intensities of development, may be reviewed for concurrency as one criterion in the evaluation of the preliminary

development order submittal.

- (1) The County shall determine the available capacity of public facilities prior to approving a intermediated final development order; and
- (2) No rights to obtain intermediate or final development orders, nor any other rights to develop the subject property, will have been granted or implied by the County's approval of the preliminary development order without determining the capacity of public facilities.
- (3) *Preliminary Development Orders.* These shall be Rezoning, Comprehensive Plan Amendments and similar development orders that do not necessarily reflect a specific intensity and density development proposal. They shall be orders for which a preliminary concurrency evaluation may be utilized in evaluating whether or not to approve the order and for which long-term planning implications may be considered, but for which no concurrency is granted and for which the lack of concurrency shall not be the sole reason for denial of the preliminary development order.

Consistency analysis: This policy is **inapplicable** because it addresses preliminary development orders and a special exception use is classified as an intermediate development order.

FLUE Policy 1.22.3: *Intermediate and Final Development Orders.* Prior to the issuance of an intermediate or final development order, which establish binding densities and intensities of development, the County shall require the availability of sufficient capacity of public facilities to maintain adopted LOS standards for the existing population, for reservations of approved development orders, and lastly for the needs of the new development proposed, concurrent with the timing of the new development proposed.

- (1) *Intermediate Development Orders.* These shall be site plans (development plans and special exceptions), preliminary plats, construction plan approvals (notice to proceed), and similar development orders that reflect a specific development proposal, that does not yet include vertical construction or the final division of property. These shall be orders for which a specific concurrency evaluation is required in evaluating whether or not to approve the order and for which capacity is reserved and may be held through the final development order process if the project proceeds according to the timelines of such approvals. The lack of concurrency may be the sole reason for denial of an intermediate development order.
- (2) *Final Development Orders.* These shall be variances, building permits, and final plats and similar development orders that reflect a specific development proposal that includes vertical construction or the final division of property. These shall be orders for which a

specific concurrency evaluation is required in evaluating whether or not to approve the order and for which capacity is reserved, unless such evaluation was done as an Intermediate Development Order and has not yet expired according to the timelines for such approvals. The lack of concurrency may be the sole reason for denial of a final development order.

Consistency analysis: This policy classified special exception use applications as an intermediate development order, which establish binding densities and intensities of development. Although the application does not display the intensity of development for each land use, the Development Plan shows the total or cumulative building size is 142,370 square feet. When the 55.6' by 91.2' (5,071 square feet) office building is subtracted from the total building size, it leaves a size of 137,299 square feet for the citrus byproduct processing facility. Concurrency issues related to this development are addressed elsewhere in this report. Based on the above, it is concluded the application is **consistent** with this policy.

FLUE Policy 1.22.4: Final Development Order Determination. A final development order (final concurrency determination), which establishes specific density and intensity of development shall not be issued, unless the following conditions for the provision of facilities are met (excluding approved intermediate development orders that have proceeded according to the timelines of such approvals):

- (1) Are currently in place or will be in place when the final development order is issued;
- (2) The development order is issued with the condition that the necessary facilities and services will be in place when the impacts of the development occur;
- (3) Are under construction at the time of the final development order; or
- (4) Are guaranteed by an enforceable agreement to be in place concurrent with the impacts of the development.
- (5) Are included in the 3-year funding portion of the DeSoto County Capital Improvements Program, including any adopted therein from outside agency three or five year plans (i.e. FDOT).

Consistency analysis: This policy is **inapplicable** because it applies to final development orders and a special exception use is classified as an intermediate development order.

FLUE Objective 1.12: Conservation Overlay Designation (COD). The Interim 2040 Conservation Overlay Map (FLUEMS 4) identifies public and private lands that may possess environmental limitations, such as floodplain, wetland, and other environmentally sensitive areas, including but not limited to, sloping topography subject to soil erosion, wildlife habitat areas, hydric soils, and special vegetative communities, but have

not been confirmed as such and shall be protected to the greatest extent possible. Modifications of the boundaries are permitted upon submittal of data and analysis, or field inspection by qualified personnel who support the establishment of a more appropriate boundary.

FLUE Policy 1.12.1: Conservation Overlay Designation Location. The Conservation Overlay area on the Future Land Use Map consists of those lands that potentially contain environmentally sensitive areas, specifically the 100-year Floodplain as exists on the latest FEMA maps and viable wetland areas that exist on the latest National Wetlands Inventory Map. The lines shall not be considered the exact boundary of an area. The Conservation Overlay area is not all-inclusive; other areas do not show up on the FLUM within the overlay boundaries but are environmentally sensitive for other reasons, such as protected plant and animal habitat, are also subject to the applicable Land Development Regulations and any review by agencies with jurisdiction.

Consistency analysis: The Interim 2040 Conservation Overlay Map shows the subject property has some conservation areas (See Attachment L). As part of the Improvement Plan process, a jurisdictional wetlands determination will be required. Thus, the application is **consistent** with FLUE Objective 1.12 and Policy 1.12.1 **provided** the following condition is imposed:

- ***THE IMPROVEMENT PLAN SHALL INCLUDE A WETLANDS JURISDICTIONAL DETERMINATION AND CONSTRUCTION CANNOT COMMENCE UNTIL AN ENVIRONMENTAL RESOURCE PERMIT (ERP) IS SECURED AND A NOTICE TO PROCEED APPLICATION ALONG WITH THE ERP AND FEE IS FILED WITH THE DEVELOPMENT DEPARTMENT.***

FLUE Policy 1.12.3: Conservation Overlay Designation Development Standards.

- (1) A final determination of the suitability for development of any individual parcel, as it relates to a Conservation Overlay area on the Future Land Use Map, shall be determined prior to issuance of any development approval.
- (2) The Conservation Overlay Designation area on the Future Land Use Map is not to be considered the exact boundary of the conservation area, but to act as an indicator of a potential conservation area. The exact boundary shall be determined by an environmental site study by a qualified professional at the expense of the Developer and submitted for a determination to the South West Florida Water Management District or other agency with jurisdiction.
- (3) The Conservation Overlay Designation area is not all inclusive and other areas that do not fall within the COD boundaries that meet the

definition of being environmentally sensitive areas are also subject to the regulations affecting them. These areas include protected plant and animal habitat.

- (4) Development proposals shall require the submittal of an Environmental Site Study indicating as to the extent of the impact of development or redevelopment for any lands within Conservation Overlay Designation areas and other environmental concerns.
- (5) Environmental Site Studies shall provide evidence and an inventory of wetlands; soils posing severe limitations to construction; unique habitat; endangered species of wildlife and plants; significant historic structures and/or sites; and areas prone to periodic flooding (areas within the 100-year floodplain).
- (6) DeSoto County shall require identification of proposed impacts to the natural functions of any resources by any development or redevelopment that proposes to be placed in/on, to disturb, or to alter identified areas. Compensation and Mitigation plans shall also be provided.
- (7) Such identification shall occur during the development review process and provide the opportunity for DeSoto County to review the proposed project so that direct and irreversible impacts on the identified resources are avoided, minimized, or in the extreme, mitigated.
- (8) Natural resources discovered as a result of the required Environmental Site Study will be protected in accordance with state and federal law. The Environmental Site Study will require that a qualified professional analyze the natural functions of eco-systems and connectivity of resource corridors. A conservation easement, or other protective measure, may be required to protect the functions of natural resources. Mitigation may be allowed on a case-by-case basis through the appropriate reviewing agencies.
- (9) If an area is determined to be developable and not within the Conservation Overlay Designation, then the underlying future land use category shall apply.

Consistency analysis: This policy is **inapplicable** because it applies during the Improvement Plan review process and not during the special exception use review process. Thus, the application is **consistent** with this policy **provided** the following condition is imposed:

- ***THE IMPROVEMENT PLAN APPLICATION SHALL INCLUDE AN ENVIRONMENTAL SITE STUDY CONSISTENT WITH FLUE POLICY 1.12.3 AND LAND DEVELOPMENT REGULATIONS ARTICLE V, DIVISION 1.***

FLUE Policy 1.12.4: Any development of a site which includes property determined to be in a Conservation Overlay Designation area, is required to submit a site-specific plan for approval. The plan shall include the

clustering of density away from the protected areas and resources. Developments that include Conservation Overlay Designations, but cluster all development activities outside of the Overlay, may be reviewed via a Site Plan Approval process. The following restrictions shall apply to areas determined to be in the COD:

- (1) Density transfers out of areas determined to be within the Conservation Area may occur on-site with the following density transfer allowed:
 - (a) Rural/Agricultural Land Uses shall be consistent with the underlying zoning
 - (b) Low Density Residential Land Uses shall be 1 unit per 4 acres.
 - (c) Medium Density Residential, Neighborhood Mixed Use, and General Mixed Use Districts shall be 1 unit per 2 acres.
 - (d) Urban Center Mixed Use Mixed Use shall be 1 unit per 1 acre. In the future, density transfers out of the Conservation Area may be able to occur offsite from Rural/Agricultural Future Land Uses to Non- Rural/Agricultural Future Land Uses as part of a Transfer of Development Rights Program.
- (2) Development within the Conservation Overlay area shall be restricted to 1 unit per 10 acres and a FAR of 0.1, unless otherwise provided for herein. All development shall be directed away from wetlands.

Consistency analysis: This policy is inapplicable because it pertains to residential density and the special exception use application does not propose any residential uses. Thus, the application is **consistent** with FLUE Policy 1.12.5

FLUE Policy 1.12.6: The County shall prohibit all development within, and direct development away from, wetlands, unless otherwise approved by the appropriate reviewing agency. Site enhancement for conservation purposes and Best Management Practices including, without limitation, the use of isolation berms to protect water quality and prevent wildlife from migrating into developed areas shall not be deemed “development” for the purposes of this policy, when used pursuant to phosphate mining.

- (1) When wetland impacts cannot be avoided, DeSoto County shall require a specific management plan to be prepared by the developer, which results in no net loss of wetlands or wetland functions and which includes necessary modifications to the proposed development, specific setback and buffers, and the location of development away from site resources, to protect and preserve the natural functions of the resource.
- (2) The minimum setback shall be 15 feet and the average of all setbacks from the wetland resource shall be 25 feet, unless otherwise permitted by the appropriate reviewing agency. Best

Management Practices, including, without limitation, the use of isolation berms to protect water quality and prevent wildlife from migrating into developed areas shall be permitted within the setback areas, when used pursuant to phosphate mining.

- (3) Areas designated as natural buffers shall preserve all natural vegetative cover, except where drainage ways, access ways or phosphate mining corridors are approved to cross the buffer, or when contrary to Best Management Practices. Buffers may be supplemented only with native trees, shrubs and ground covers.

Consistency analysis: The Development Plan does not display the wetland boundaries or the buffer but these are issues best addressed during the Improvement Plan review process and not the Development Plan review process. Based on the above, it is concluded the application is **consistent** with FLUE Policy 1.12.6 **provided** the following condition is imposed:

- ***THE IMPROVEMENT PLAN SHALL DISPLAY THE WETLAND AREA BOUNDARIES AND BUFFER SETBACKS AND DEVELOPMENT SHALL BE IN CONFORMANCE WITH THE MINIMUM BUFFER SETBACK REQUIREMENTS.***

FLUE Policy 1.12.8: On all existing parcels of land, development shall be located away from wetlands and floodplains on the upland portion of the site, unless otherwise permitted by an authorized agency and permissible within this Plan. Where no upland exists, development may occur so long as all applicable environmental permitting requirements can be satisfied. All future subdivision of land shall contain adequate uplands for the permitted use.

Consistency analysis: The Development Plan shows development is located away from wetlands. Thus, the application is **consistent** with FLUE Policy 1.12.8.

FLUE Policy 1.14.2: Use compatibility. Compatibility between uses will be defined by level of density and intensity rather than by use, with the exception of large-scale public uses such as airports, regional hospitals, refineries and correctional institutions.

Consistency analysis: The Comprehensive Plan defines “compatibility” as “(a) condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion such that no use or condition is negatively impacted directly or indirectly by another use or conditions.” A compatibility analysis is addressed elsewhere in this report and that analysis concludes the development is compatible with surrounding uses provided conditions are imposed. Based on the above, it is concluded the application is **consistent** with FLUE Policy 1.14.2.

Transportation Element (TE)

TE Objective 1.1: Level of Service. The County shall adopt and adhere to level of service standards for arterial and collector streets.

TE Policy 1.1.1: Service Standards. The County establishes the following peak hour /peak directional level of service standards for collector, arterial, local, and limited access facilities in the County.

ROADWAY TYPE	STATE ROAD URBANIZED AREA	STATE ROAD OUTSIDE URBANIZED AREA	COUNTY ROAD
Limited Access Facilities	D	C	D
Controlled Access Highway	D	C	D
Other Multi-lane Roads	D	C	D
Two-lane Roads	D	C	D

Consistency analysis: The application includes a traffic statement indicating that according to the trip generation formula for industrial facilities in the Institute of Traffic Engineers (ITE) Trip Generation Manual, the proposed development is projected to add 262 average daily trips to the roadway. The additional trips will not cause the adopted level of service standard to be exceeded. Based on the above, the application is **consistent** with TE Objective 1.1 and TE Policy 1.1.1.

TE Policy 1.2.8: Access Points. The County shall require that future subdivisions with 50 units or more, at a minimum, have at least two (2) points of access open to motor vehicle traffic. Secondary access points, at the discretion of the BOCC and as further defined in the LDR’s may be established as emergency only access points per County standards.

Consistency analysis: This policy is **inapplicable** because it applies to residential subdivisions and this project is non-residential. Nonetheless, the application provides for two accessways onto SR 70.

TE Policy 1.2.14: Traffic Study. High traffic generators shall require a project-specific traffic study. The study will include methodology accepted by the County and will evaluate, at a minimum, existing traffic conditions and LOS, determine project traffic generation, cumulative traffic conditions, mitigation of traffic impacts for on- and off-site, and evaluate LOS for transportation linkages to collector and arterial roadways, if appropriate.

Consistency analysis: A traffic statement has been provided showing

traffic generation and demonstrating conformance with the adopted roadway Levels of Service. Thus, the application is **consistent** with the application.

TE Policy 1.5.3: Analysis of FLUM and Zoning Amendments. The County shall consider the potential maximum impacts of all Future Land Use Map and zoning amendments on the LOS for all roadways directly and indirectly affected by the amendment when making such decisions. However, specific impacts and any required roadway improvements shall only be determined based on the submittal of a defined development proposal as part of the County's overall concurrency system.

Consistency analysis: This policy is **inapplicable** because it addresses FLUM and zoning amendment applications and this is a special exception use application.

TE Policy 1.8.13: New residential developments with densities of one or more dwelling units per acre shall provide sidewalks on at least one side of every street and shall be constructed in coordination with the new street or building activity.

Consistency analysis: This policy is **inapplicable** because it addresses residential development and this is a non-residential amendment.

Conservation Element (CE)

Groundwater Resources:

CE Policy 1.2.10: All requests for development shall be reviewed to ensure that potential impacts of the proposed development do not degrade the water quality and quantity of groundwater resources.

Consistency analysis: Water quality and quantity of groundwater resources are best addressed through the Improvement Plan and not special exception use review process. Based on the above, it is concluded the application is **consistent** with CE Policy 1.8.13.

CE Policy 1.2.15: DeSoto County shall protect groundwater recharge areas throughout the County by requiring properly functioning stormwater management systems meeting drainage LOS standards and a minimum percentage of 15% pervious open space for all non-residential development projects and a minimum of 25% pervious open space for residential development projects. This may be further restricted in the LDRs through individual zoning districts and other development performance standards.

Consistency analysis: The Development Plan shows significantly more than 15% pervious open space. Based on the above, it is concluded the application is **consistent** with CE Policy 1.2.15.

Surface Water:

CE Policy 1.4.3: The County shall identify and require the creation of upland buffer zones, in accordance with the regulations of the water management districts, between development and surface water, environmentally sensitive areas, and wetlands in order to protect these natural resources from the activities and impacts of development.

Consistency analysis: This policy is **inapplicable** because the delineation of uplands and upland buffer zones is conducted through the Improvement Plan review process and not the special exception use review process.

CE Policy 1.4.5: Buffer zones shall serve as protection to surface water from intrusive activities and impacts of development.

Consistency analysis: This policy is **inapplicable** because the delineation of uplands and upland buffer zones is conducted through the Improvement Plan review process and not the special exception use review process.

Wetland Protection:

CE Objective 1.5: Wetland Protection. Wetlands and the natural functions of wetlands shall be conserved, protected, and restored from activities which alter their physical and hydrological nature to ensure the filtration of water to enhance water quality, provide flood control, maintain wildlife habitat, and offer recreational opportunities, which enhance the quality of life in DeSoto County.

CE Policy 1.5.1: The County, as part of its development review process, shall require the coordination of development plans with the Florida Department of Environmental Protection, the Southwest Florida Water Management District or other appropriate regulatory agency, to assist in monitoring land uses which may impact potential wetlands as shown on the National Wetlands Inventory (shown as part of the Conservation Overlay Area on the FLUM)

Consistency analysis: This objective and policy is **inapplicable** because it applies to the Improvement Plan and not special exception use review process.

CE Policy 1.5.2: The County shall require that all development proposals be accompanied by evidence that an inventory of wetlands; soils posing

severe limitations construction; unique habitat; endangered species of wildlife and plants; significant historic structures and/or sites; has been conducted.

Consistency analysis: This policy is **inapplicable** because it applies to the Improvement Plan and not special exception use review process. In addition, a condition requiring an environmental assessment already has been recommended.

Floodplain and Floodways:

CE Objective 1.6: Floodplains and Floodways. DeSoto County shall ensure long-range protection and restoration of functions of the remaining floodplains.

Consistency analysis: The Comprehensive Plan defines floodplains as areas inundated during a 100-year flood event or identified by the National Flood Insurance Program as an A Zone or V Zone on Flood Insurance Rate Maps or Flood Hazard Boundary Maps. The Floodplain Map shows the property is predominantly located within the X zone but has two areas with A zone (See Attachment M). Floodplain protection issues are addressed through the Improvement Plan and not the special exception use review process. Therefore, CE Objective 1.6 is **inapplicable**.

CE Policy 1.6.2: The County shall require that all development proposals be accompanied by evidence that an inventory of soils posing severe limitations to construction; unique habitat; endangered species of wildlife and plants; significant historic structures and/or sites; and areas prone to periodic flooding (areas within the 100-year floodplain) has been conducted.

Consistency analysis: A soil conditions map shows the predominant soil type is Smyrna (See Attachment N). Notwithstanding, soil conditions, environmental, and cultural and historic resource issues are best addressed through the Improvement Plan and not the special exception use review process. Therefore, CE Policy 1.6.2 is **inapplicable**.

2. *Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe.*
 - a. Automotive safety and convenience. The Development Director finds the development plan proposes two accessways onto SR 72: one for commercial truck traffic and the other for personal vehicles. The commercial truck vehicle accessway is located so it aligns with the accessway into the Peace River Citrus facility, which location

provides for a safe and convenient movement of truck traffic. Internally, the accessway transforms into a looped or circular driveway. The looped network allows for safe and convenient internal commercial truck traffic circulation.

The personal vehicle accessway converts into a driveway that connects to the office building parking lot. The configuration of this accessway/driveway does not create any safety issues and is convenient. Therefore, it is concluded the application is **in conformance** with this requirement.

- b. Pedestrian safety and convenience. No public sidewalks exist along SR 72. The application notes that the NUCO project will operate as a private facility and access will not be available to the public. Notwithstanding, neither the special exception use application nor the development plan application provide a safe and convenient internal pedestrianway between the office building and the other buildings on the premises, including cross-walks along the driveways. A safe and convenient path from the office building to the dumpster enclosure also is not addressed. Therefore, it is concluded the application is **in conformance** with this requirement **provided** the following condition is imposed:

- ***THE IMPROVEMENT PLAN SHALL PROVIDE FOR A SAFE AND CONVENIENT INTERNAL PEDESTRIANWAY BETWEEN AND AMONG THE OFFICE BUILDING AND THE OTHER BUILDINGS.***

- c. Traffic flow and control. The application states no off-site improvements are needed. The Florida Department of Transportation (FDOT) has jurisdiction over SR 72 and the FDOT's comment did not indicate the need for any traffic signal, turn lanes, or acceleration and deceleration lanes. Based on the above, the application is in **conformance** with this factor.

- d. Access in case of fire or catastrophe. The application justification suggests that the two accessways will provide access in the case of fire or catastrophe. Notwithstanding, should the commercial truck accessway be blocked and a fire or catastrophe were to occur in the processing portion of the premises, emergency and fire suppression vehicles will not be able to access that portion of the premises. Likewise, if the personal vehicle entrance is blocked, access to the office building may be unavailable during a fire or catastrophe. Based on the above, it is concluded the application is **in conformance** with this requirement **provided** the following condition is imposed:

- ***THE IMPROVEMENT PLAN SHALL PROVIDE FOR AN EMERGENCY DRIVEWAY CONNECTING THE COMMERCIAL TRUCK DRIVEWAY TO THE PERSONAL VEHICLE DRIVEWAY. THIS MAY BE ACCOMPLISHED BY EXTENDING A DRIVEWAY FROM THE OFFICE BUILDING PARKING LOT SOUTH.***

3. *Off-street parking and loading areas, where required, and economic, noise, vibration, dust, glare or odor effects of the Special Exception on adjoining properties and properties generally in the district.* Issues generally related to off-street parking and loading has been addressed elsewhere in this report.

- a. Economic impacts. The application justification states NUCO's proposed facility will have a positive, direct economic impact on the local community by providing construction jobs, paying plant employees' wages and salaries (in the case here 150% greater than DeSoto's average annualize wage) and creating expanded teaching opportunities for a new specialized certification program at DeSoto's local college. Additionally, NUCO's partnerships with Florida-based orange processors, growers' cooperatives and local farmers will provide an additional revenue stream to the citrus industry that has struggled in recent years due to lost crops from greening, hurricanes, and other factors.

The justification statement notes the citrus byproduct production facility will be the first of its kind in the United States and will help reduce America's dependence on foreign citrus byproducts, such as pectin. The \$120± million facility will generate substantial ad valorem taxes and create over 100 new full-time jobs. No economic liabilities were identified. Based on the above, it is concluded the application is **in conformance** with this requirement because it will have a positive economic impact.

- b. Noise impacts. The application states the facility will be designed and will operate in accordance with applicable County noise regulations. It is unclear, however, what types of noises are generated from this type of facility (e.g., broadband, infrasonic, impulsive, and tonal).

LDR Section 20-444 provides all development shall be designed to avoid unnecessary impervious surface cover; to provide adequate access to lots and sites; and to avoid adverse effects of shadow, glare, noise, odor, traffic, drainage, and utilities on surrounding properties.

Code of Ordinance (CO) Section 11-40(a) provides the making, creation, or maintenance of excessive, unnecessary or unusually loud noises is prohibited and constitutes a violation of this article. CO Section 11-40(b) provides the following acts are declared to be excessive, unnecessary, or unusually loud noises in violation of this article, and the person or persons causing or responsible for such acts shall be in violation of this article: Frequent, repetitive or continuous noise by construction, industrial, land clearing, and land filling operations in such a manner as to unreasonably disturb the peace, quiet, and comfort of neighboring inhabitants.

Notwithstanding the above, CO Section 11-43 exempts from the noise ordinance “Construction, industrial, land clearing, and land filling operations between the hours of 7:00 a.m. and 10:00 p.m., for which all required permits have been issued, provided that the equipment involved is operated in accordance with all permit conditions, the manufacturer's specifications, and with all manufacturer's noise reducing equipment in use and in proper operating condition.

Golder has prepared a preliminary noise assessment that shows the decibel levels at the receptor and what the corresponding onsite decibel level would need to be to achieve that level at the receptor projecting away from the site. During the final design and procurement process, NUCO will specify that the vendors use equipment that can meet the required noise levels or provide noise-abating hosing/structures if necessary to reduce equipment noise.

The closest receptor (residence) is approximately 370 meters away from the center of the NUCO site. Based on just distance attenuation, Golder calculated the average source noise level from operations and the noise impact at that residence as sound pressure levels:

<i>Residential Sound Level (dBA)</i>	<i>Corresponding On Site Source Sound Level (dBA)</i>	<i>Comments</i>
65	117	Significant interference with outdoor activities
60	112	
55	107	Typical Daytime Standard
50	102	
45	97	Typical Nighttime Standard

These calculations are conservative in nature as it does not include other forms of noise attenuation. Outdoor activities can be affected by sound levels at or above 55 dBA, and significantly interfered with at sound levels at or above 65 dBA.

Based on emails received from NUCO, the vendor supplied equipment sound pressure levels range from a low of around 72 dBA to a high of about 88 dBA. The overall noise level from the project will be calculated at the time of final design.

Given the uncertainty associated with development of a state-of-the-art and one of a kind development, it is recommended the conditions be imposed in order mitigate potential noise. Based upon the Noise Comparison Chart (See Attachment O), it is recommended the following condition be imposed to mitigate unknown and potential adverse noise impacts:

- NUCO CITRUS, LLC SHALL NOT CREATE, OPERATE OR CAUSE TO BE OPERATED ANY SOURCE OF SOUND IN SUCH A MANNER AS TO CREATE A CONTINUOUS AIRBORNE SOUND WHICH EXCEEDS THE LIMITS SET FORTH IN THE TABLE BELOW WHEN MEASURED AT A DISTANCE OF 300 FEET OR MORE FROM THE REAL PROPERTY LINE OF THE SOURCE OF THE SOUND. CONTINUOUS AIRBORNE SOUND MEANS SOUND THAT IS MEASURED BY THE SLOW-RESPONSE SETTING OF A METER MANUFACTURED TO THE SPECIFICATIONS OF ANSI § 1.4-1971 "SPECIFICATION FOR SOUND LEVEL METERS," OR ITS SUCCESSOR. ANY SOURCE OF SOUND IN VIOLATION OF THIS CONDITION SHALL BE DEEMED PRIMA FACIE TO BE A NOISE DISTURBANCE.***

<i>RESIDENTIAL USE</i>		<i>NON-RESIDENTIAL USE</i>	
<i>DAYTIME</i>	<i>NIGHTTIME</i>	<i>DAYTIME</i>	<i>NIGHTTIME</i>
<i>60 dB(A)</i>	<i>55 dB(A)</i>	<i>65 dB(A)</i>	<i>60 dB(A)</i>

IN ADDITION, NUCO SHALL NOT EMIT ANY IMPULSIVE SOUND EXCEEDING THE STANDARDS IN THE TABLE BELOW. IMPULSIVE SOUND MEANS SOUND OF SHORT DURATION, OR LESS THAN TEN SECONDS.

<i>NUMBER OF REPETITIONS PER 24 HOURS</i>	<i>SOUND LEVEL IN dB(A)</i>
<i>1</i>	<i>90</i>
<i>12</i>	<i>80</i>
<i>24</i>	<i>70</i>

- c. Vibration impacts. The application states the facilities will not result in any perceptible vibrations beyond the property line. To ensure conformance with the Applicant’s statement, it is recommended the following condition be imposed

- NUCO CITRUS, LLC SHALL COMPLY WITH THE STANDARD SET FORTH IN SECTION 8 OF THE UNITED STATES DEPARTMENT OF***

TRANSPORTATION NOISE AND VIBRATION ASSESSMENT (MAY 2006).

- d. Dust impacts. Dust, or unconfined emissions, can be defined as finely divided solid particulate material that is airborne. The revised application states the project will generate minor amounts of dust and air pollution. If required because of tripping regulatory thresholds, NUCO will employ pollution control devices such as baghouses and scrubbers in order to achieve regulatory compliance. All of the on-site truck routes will be paved so that fugitive dust generation will be reduced. Air and dust emissions are regulated as part of the required air construction permit process with the Florida Department of Environmental Protection (FDEP). Additionally, the facility will be required to submit annual monitoring and compliance information to FDEP.

With regard to hazardous materials, if any such hazardous materials on site, they will be handled and stored in accordance with state and federal regulations. NUCO will be required to produce, and submit to FDEP for approval, a Spill Containment and Countermeasure Plan (SPCC). Additionally, NUCO will file an annual Toxic Release Inventory Report and Tier II Emergency and Hazardous Chemical Inventory Form, if required. These reports are public information and are available for anyone to review.

In order to avoid potential dust, air pollution, and hazardous or noxious materials concerns, it is recommended the following conditions be imposed:

- ***NUCO CITRUS, LLC SHALL MAINTAIN AIR QUALITY LEVELS THAT COMPLY WITH THE AIR OPERATING PERMIT REQUIREMENTS AS ISSUED BY THE FDEP.***
- ***NUCO CITRUS, LLC SHALL NOT CAUSE, CREATE, OR ALLOW THE EMISSION OF AIR POLLUTANTS WHICH AT THE EMISSION POINT OR WITHIN THE BOUNDS OF THE PROPERTY ARE IN VIOLATION OF THE STANDARDS SPECIFIED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, OR SUCCESSOR AGENCY, OR ANY GOVERNMENTAL ENTITY WITH REGULATORY JURISDICTION, WHICHEVER STANDARDS ARE MORE STRINGENT.***
- ***OPEN STORAGE AND OPEN PROCESSING OPERATIONS, INCLUDING ON-SITE TRANSPORTATION MOVEMENTS, WHICH ARE THE SOURCE OF WINDBLOWN OR AIRBORNE DUST OR OTHER PARTICULATE MATTER; OR WHICH INVOLVE DUST OR OTHER PARTICULATE AIR POLLUTANT GENERATING EQUIPMENT INCLUDING BUT NOT LIMITED***

TO PAINT SPRAYING, GRAIN OR SEED HANDLING, SAND OR GRAVEL PROCESSING OR STORAGE OR SAND BLASTING SHALL BE CONDUCTED SUCH THAT DUST AND OTHER PARTICULATE MATTER SO GENERATED ARE NOT TRANSPORTED ACROSS THE BOUNDARY PROPERTY LINE OR THE TRACT ON WHICH THE USE IS LOCATED IN CONCENTRATIONS EXCEEDING STANDARDS SET BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, OR SUCCESSOR AGENCY, OR ANY GOVERNMENTAL ENTITY WITH REGULATORY JURISDICTION, WHICHEVER STANDARDS ARE MORE STRINGENT.

- **NUCO CITRUS, LLC SHALL NOT EMIT TOXIC OR NOXIOUS MATTER AT A CONCENTRATION EXCEEDING AIR QUALITY STANDARDS FOR THE STATE OF FLORIDA ACROSS THE PROPERTY LINE OF THE PARCEL ON WHICH THE OPERATION OR USE IS LOCATED. WHERE TOXIC MATERIALS ARE NOT LISTED IN THE AMBIENT AIR QUALITY STANDARDS OF THE STATE, CONCENTRATIONS SHALL NOT EXCEED ONE PERCENT OF THE THRESHOLD LIMIT VALUES (TLVs) ADOPTED BY THE AMERICAN CONFERENCE OF GOVERNMENTAL INDUSTRIAL HYGIENISTS (ACGIH). IF A TOXIC SUBSTANCE IS NOT LISTED BY THE ACGIH, VERIFICATION OF SAFE LEVELS OF THE PROPOSED TOXIC MATERIAL FOR PUBLIC HEALTH, PLANT AND ANIMAL LIFE WILL BE REQUIRED.**

e. Glare impacts. Glare is a visual sensation caused by excessive and uncontrolled brightness. The SEU application states all outdoor light fixtures will be down-lighted or shielded to minimize off-site light encroachment. Thus, the application is in **conformance** with the glare avoidance requirements.

f. Odor impacts. The application states NUCO does not anticipate having objectionable odors on site. For certain industrial and agricultural sites, objectionable odor, if occurring, would typically be present as a result of decaying organic matter that has been left outside to decompose. NUCO's process and operation manual will require raw orange peels and other organic matter to be collected and processed within 2 hours of arriving on site. Additionally, site housekeeping measures call for the processing floor, which is completely enclosed, to be swept and cleaned at the end of each shift. Nonetheless, to ensure the development does not emit any potentially noxious or unwanted odors, it is recommended the following condition be imposed:

- **NUCO CITRUS, LLC SHALL NOT BE OPERATED IN SUCH A MANNER THAT THE EMISSION OF ODOROUS MATTER OCCURS IN SUCH QUANTITY OR VOLUME AS TO PRODUCE A NUISANCE, SOURCE OF DISCOMFORT, OR HAZARD BEYOND THE BOUNDING PROPERTY**

LINES. FOR THE PURPOSE OF THIS PERFORMANCE STANDARD, THE PRESENCE OF SUCH A DESCRIBED ODOR SHALL BE DETERMINED BY OBSERVATION BY A PERSON OR PERSONS DESIGNATED BY THE COUNTY ADMINISTRATOR OR DESIGNEE. IN ANY CASE, WHERE THE OPERATOR OF AN ODOR-EMITTING USE MAY DISAGREE WITH THE ENFORCING OFFICER WHERE SPECIFIC MEASUREMENT OF ODOR CONCENTRATION IS REQUIRED, THE METHOD AND PROCEDURES SPECIFIED BY THE AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) E679 AND E1432, ENTITLED "STANDARD PRACTICE FOR DETERMINATION OF ODOR AND TASTE THRESHOLDS BY A FORCED-CHOICE ASCENDING CONCENTRATION SERIES METHOD OF LIMITS" AND "STANDARD PRACTICE FOR DEFINING AND CALCULATING INDIVIDUAL AND GROUP SENSORY THRESHOLDS FOR FORCED-CHOICE DATA SETS OF INTERMEDIATE SIZE," RESPECTIVELY. THE OPERATOR AND THE CITY SHALL EQUALLY SHARE THE COST OF CONDUCTING THE MORE ELABORATE ASTM E679 PROCEDURE.

4. *Utilities, with reference to locations, availability and compatibility.*

Utilities were addressed in Section III.B. of this report.

5. *Screening and buffering with reference to type, dimensions and character.*

Screening and buffering were addressed in Section III.B. of this report.

6. *Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effects, and compatibility and harmony with properties in the district.*

Signs and lighting were addressed in Section III.B of this report.

7. *Required yards and other open space.*

Required yards and other open space were addressed in Section III.B of this report.

8. *General compatibility with adjacent properties and other property in the district.*

Florida Statutes Section 163.3164(9) defines "compatibility" as "a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition." FLUE Policy 1.12.2 further provides that compatibility between

uses will be defined by level of density and intensity rather than by use, with the exception of large-scale public uses such as airports, regional hospitals, refineries and correctional institutions

Table 1 and Attachment A show the subject property is located within a semi-rural area with an 82-acre citrus processing plant and two residential subdivisions with 5.0-acre lots located along the north side of SR-70. According to the DeSoto County Property Appraiser’s records, two of the 18 buildings on the 82-acre citrus plant were constructed in the late 1960s; four were constructed in the 1970s; one in the 1980s; seven in the 1990s; and the remaining four after 2005. The Pine Ridge Estates neighborhood was created as an unrecorded subdivision with 49 lots in 1969. The Windy Pines Manor neighborhood was created as another unrecorded subdivision with 49 lots in 1970. Notwithstanding, several dwellings were constructed within the area prior to the preparation of these unrecorded plats.

**TABLE 1
EXISTING LAND USES, ZONING DISTRICTS AND FLUM**

DIRECTION	EXISTING LAND USE	ZONING	FLUM
Site	196.34-acres of vacant and unplatted land	A-10	R/AG
North	24-acre and 20-acre properties in pastureland	A-10	R/AG
Northwest	SR-72, then the 82-acre Peace River Citrus plant; 14 one-half acre, more or less, lots within Windy Pines Manor; and 15 one-half acre, more or less, lots within Pine Ridge Estates	IH and RM	R/AG
South	Agricultural land ranging from 5.0-acres to 40-acres	A-10	R/AG
East	Agricultural land ranging from 0.59-acres to 159-acres	A-10	R/AG

Sources: DeSoto County Property Appraiser (2018); DeSoto County Geographic Information System maps.

The Development Plan shows the subject property will be setback 700± feet south and east of the nearest Windy Pines Manor lot. Further, west of the development site, the existing landscaping area will be retained. The distance between the development and the residential area coupled with the significant existing landscaping and the predominant number of single-story buildings within the development should substantial screen and buffer the residential areas on SR 72 from negative externalities due to construction related dust, operational air emissions, noise, vibrations, glare and visual or aesthetic conditions.

The Development Plan also shows the proposed development is setback a significant distance from the larger lot properties to the north, south, and west. In addition, the same conditions listed above should help screen

and buffer those abutting properties from externalities generated from the development.

With regard to intensity of use, the application proposes 142,370 square feet on 196.34 acres, which represents a floor area ratio of 1.66 percent, which is significantly lower than the maximum allowable floor area ratio of 40 percent.

That portion of the site being developed with the citrus byproduct processing facility is located 0.5+ mile from a turf runway located on property owned by Mr. Ronald B. McDonald. Mr. McDonald has filed a letter with the Development Director requesting the Board require the Applicant to provide a Federal Aviation Administration airspace study (See Attachment P). In response, the application notes that Golder has completed the FAA Notice Criteria Tool to determine if additional airspace obstruction studies are required for this project. According to this tool, the project does not exceed the minimum notice criteria. The tallest structure on site will be 125 feet above ground and will have FAA compliant lighting fixtures.

Based on these findings above and the recommended conditions of approval, it is concluded the application is in **conformance** with the compatibility requirement.

9. *Any special requirements set out in the zoning district regulations for the particular use involved.*

The Development Director finds the special requirements were addressed in Section III.B of this report.

10. *Public and private utilities, structures, or uses required for public or private utilities, including but not limited to wastewater, gas, electric, and telephone utilities, sanitary landfills, and radio and television stations and towers may be permitted only as a special exception use unless determined by the Board to be essential service. In addition to items 1 through 9 above, the review of the request for a Special Exception Use shall include consideration of a plan showing all improvements or alterations that are proposed for the utilities or facilities. The proposed location of such utilities or facilities shall be such as not to be injurious to the health, safety, and welfare of the public or surrounding property owners, and shall protect the character of the surrounding property and maintain the stability of residential, commercial, manufacturing, agricultural, educational, cultural, and recreational areas within the County. The public benefit to be derived, the need for the proposed facilities, the existence of suitable alternative locations, potential impacts to surface or ground water drinking supplies, and whether the facility can*

properly be located on the site and in the development which it is to service shall also be taken into consideration where appropriate. Conditions in the form of screening, landscaping, or other site development restrictions may be imposed to protect the health, safety and welfare of the public or surrounding property owners.

This special exception use application is not for a public or private utility, structure or uses. Thus, this factor or criteria is **not applicable**.

11. *The proposed use shall not act as a detrimental intrusion into the surrounding area.*

The application suggests the proposed use will not act as a detrimental intrusion into the surrounding area but as a beneficial and complementary use to the adjacent citrus processing plant. The proximate location of the proposed development to the existing citrus processing plant will reduce from the abutting roadways the significant amount of heavy commercial truck traffic were the facility to be located elsewhere within DeSoto County. Coupled with the existing landscaping and significant setbacks, it is concluded the proposed development is in conformance with this requirement.

Notwithstanding, as this facility is the first of its kind and there are no other facilities to which it can be compared, staff has concerns based upon the so-called "law of unintended consequences". These superfluous consequences may or may not be foreseeable or even immediately observable and they may be beneficial, harmful or neutral in their impact. In the best-case scenario, an action produces both the desired results and unplanned benefits; in the worst-case scenario, however, the desired results fail to materialize and there are negative consequences that make the original problem worse. In order to avoid these unknown and unforeseeable consequences while at the same time protecting the applicant's substantial investment, the Development Director recommends the following conditions be imposed:

- ***IT IS THE INTENT OF THIS CONDITION TO PROTECT NUCO CITRUS, LLC'S SIGNIFICANT INVESTMENT IN DESOTO COUNTY WHILE PROTECTING THE PUBLIC HEALTH, WELFARE AND SAFETY OF THE COMMUNITY FROM UNFORESEEABLE NEGATIVE CONSEQUENCES. AS SUCH, WITHIN ONE-YEAR AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY OR CERTIFICATE OF COMPLETION, THE BOARD OF COUNTY COMMISSIONERS SHALL RECEIVE A REPORT FROM NUCO CITRUS, LLC CONCERNING ITS COMPLIANCE WITH CONDITIONS IN THIS SPECIAL EXCEPTION USE AND DEVELOPMENT PLAN APPROVALS.***

- ***ANY VIOLATION OF THE SPECIAL EXCEPTION USE CONDITIONS OF APPROVAL SHALL ALSO BE A VIOLATION OF THE DEVELOPMENT PLAN OR IMPROVEMENT PLAN APPROVAL.***

12. *The proposed use shall meet the performance standards of the district in which the proposed use is permitted.*

The A-10 zoning district does not establish minimum performance standards for agriculturally related uses.

In conclusion, based upon the totality of the circumstances as documented herein, the Development Director finds competent substantial evidence has been provided to support the conclusion that the approval of the special exception uses will be in harmony with the LDR general intent and purpose, not be injurious to the neighborhood or to adjoining properties, or otherwise detrimental to the public welfare provided appropriate conditions are imposed.

D. Public notice requirements. LDR Section 20-1439(c) requires notice of the date, time and place of the public hearings by the Planning Commission and Board of County Commissioners shall:

1. Be sent at least 10 days in advance of the hearings by mail to ten surrounding property owners or all owners of property within 1,000 feet of the property line of the land subject to the special exception use application; and
2. Have at least one sign posted on each road frontage; and
3. Be advertised in a newspaper of general circulation in DeSoto County at least 10 days prior to each public hearing.

On or before January 25th, 2019, Staff caused written notice of the hearings to be mailed to all property owners and such notice is on file with the Development Department and incorporated herein by reference. Staff also has taken a photograph of the sign in place (See Attachment Q), and the advertised notice of public hearing, incorporated herein by reference, is included in the Proof of Publication (See Agenda Item VI).

IV. ATTACHMENTS

- Attachment A: Special exception use application
- Attachment B: General Location Map
- Attachment C: Interim 2040 Future Land Use Map, Excerpt

- Attachment D: Official Zoning District Atlas, Excerpt
- Attachment E: Land Development Regulations, Excerpt
- Attachment F: Conceptual Oblique Aerial Map and Building Descriptions
- Attachment G: Proposed Resolution
- Attachment H: Development Review Committee comments
- Attachment I: Proposed Development Plan
- Attachment J: Future Land Use Element (FLUE) Objective 1.3 and its implementing policies
- Attachment K: FLUE Map Series, West River Study Area
- Attachment L: Conservation Area Overlay, Excerpt
- Attachment M: Floodplains Map, Excerpt
- Attachment N: Soil Conditions Map, Excerpt
- Attachment O: Noise Comparison Chart
- Attachment P: Public Comment: Proximate Runway
- Attachment Q: Photograph of posted signs in place

V. FINDINGS AND CONCLUSIONS

Based upon the information contained in this Development Review Report, the following findings of fact and conclusions of law are offered:

- A. Nuco Citrus, LLC has a contract to purchase 196.34-acres of vacant and un-platted land located on the south side of State Road 72 about 1.42 miles southwest of its intersection with State Road 70.
- B. The Interim 2040 Future Land Use Map shows the property is located within the Rural/Agriculture designation and the Future Land Use Element Objective 1.3 and its implementing policies allow agricultural uses within the R/A designation.
- C. The DeSoto County's Official Zoning District Atlas shows the subject property is located within the Agricultural 10 (A-10) zoning district and the Land

Development Regulations (LDR) Section 20-126 allows within the A-10 zoning district agriculturally related processing uses as a special exception use.

- D. On behalf of Nuco Citrus, LLC, a special exception use application (SE 2018-06) to allow a citrus byproduct processing facility with office building and related improvements on the subject property along with a fee was filed with the Development Department on December 3rd, 2018.
- E. Land Development Regulations (LDR) Section 20-3(c) empowers the Development Director to be responsible for interpreting the LDR and the Development Director has interpreted a citrus byproduct processing facility to be an agriculturally related processing use.
- F. LDR Section 20-1432 establishes procedures for processing a special exception use application. The Development Director concludes the application is **in conformance** with the requirements of LDR Section 20-1432 based on the findings that the application is complete, that the Development Review Committee has reviewed and provided comments on the application, that a staff report has been prepared, and that the application has been scheduled before the Planning Commission.
- G. LDR Section 20-1431 requires that the application include material necessary to demonstrate that the approval of the special exception use will be in harmony with the LDRs general intent and purpose, not be injurious to the neighborhood or to adjoining properties, or otherwise detrimental to the public welfare, and that such materials should include plans addressing seven (7) factors. The Development Director finds and concludes the application is **in conformance** with those factors provided conditions are imposed: on the size of the development; the days and hours of operation; the design and operation of the wastewater treatment facility; the retention of existing landscaping; and signage.
- H. LDR Section 20-1433 requires the Planning Commission make written findings that the granting of the Special Exception Use will not adversely affect the public interest, that the specific requirements governing the individual special exception use, if any, have been met by the applicant, and that satisfactory provisions and arrangements have been made concerning twelve (12) matters. This Development Department Report represents the Planning Commission's written findings and conclusion concerning the special exception use application. The Development Director concludes the application is **in conformance** with this requirement **provided** that conditions are imposed: to protect natural resources; provide for pedestrian safety and emergency access; to mitigate potential land use incompatibilities, such as noise, vibrations, air quality including dust, noxious matters, odors; a reporting requirement; and violations.
- I. LDR Section 20-1439 establishes public notice requirements and the Development Director concludes the application has been processed **in**

conformance with said requirement based on the findings the public hearings have been advertised in a newspaper of general circulation, written notice has been provided to surrounding landowners, and signage posted on the property.

VI. ALTERNATIVE ACTIONS

The Planning Commission may take one of the following alternative actions:

- A. Enter into the record the Development Review Report and all other competent substantial evidence presented at the hearing, adopt the findings and conclusions contained herein, and forward the record to the Board of County Commissioners with a recommendation that the proposed Resolution be adopted.
- B. Enter into the record the Development Review Report and all other competent substantial evidence presented at the hearing, adopt the findings and conclusions contained herein to support the Commission's recommendation, and forward the record to the Board of County Commissioners with the recommendation that the proposed Resolution **not be adopted** based on the following findings and conclusions:
 - 1. The application is not in conformance with LDR Sections 20-1431 and 20-1433 because competent substantial evidence was not provided to demonstrate that the special exception use will be in harmony with the LDR general intent and purpose, not be injurious to the neighborhood or to adjoining properties, or otherwise detrimental to the public welfare due to issues pertaining to the unforeseeable consequences associated with a one of its kind development, such as but not limited to noise, dust and air pollution, odors, and vibrations.
- C. Enter into the record the Development Review Report and all other competent substantial evidence presented at the hearing, amend the findings and conclusions contained herein to support any necessary conditions, and forward the record to the Board of County Commissioners with the recommendation that the proposed Resolution be adopted with conditions.
- D. Enter into the record the Development Review Report and all other competent substantial evidence presented at the hearing, identify any additional data and analysis needed to support the proposed Resolution, and forward the record to the Board of County Commissioners with the recommendation that the proposed Resolution **be tabled for up to six months** in order to allow staff time to provide the identified data and analysis needed to make an informed recommendation on the proposed Resolution.

VII. RECOMMENDED ACTION

- A. Recommendation. The Development Director recommends the Development Review Report and all other competent substantial evidence presented at the hearing be entered into the record, that the findings and conclusions contained herein be adopted, and that the Planning Commission forward the record to the Board of County Commissioners with a recommendation that the proposed Resolution approving with conditions the special exception use (SE 2018-06) be adopted.
- B. Planning Commission recommendation. Scheduled for the February 5th, 2019 Planning Commission meeting.
- C. Board action. Scheduled for February 12th, 2019 Board public hearing.