

**DESOTO COUNTY, FLORIDA
RESOLUTION NO. 2019- ____**

A RESOLUTION OF THE DESOTO COUNTY BOARD OF COUNTY COMMISSIONERS 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.

WHEREAS, Nuco Citrus, LLC, a Florida registered limited liability corporation with its principal address in Delray Beach, Florida, has executed a purchase and sale agreement with the property owner Owens Enterprises, Inc, a Florida for profit corporation with its principal address in Arcadia, Florida, for a 196.34-acre vacant and un-platted property (i.e., subject property) generally located on the south side of State Road 72 about 1.4 miles from its intersection with State Road 70; and

WHEREAS, the DeSoto County's Interim 2040 Future Land Use Map shows the subject property is located within the Rural/Agriculture (R/A) future land use designation and the Future Land Use Element Objective 1.3 and its implementing policies allows agricultural uses within the R/A designation; and

WHEREAS, 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; and

WHEREAS, on behalf of Nuco Citrus, LLC a special exception use application (SE 2018-06) and fee was filed with the Development Department on December 3rd, 2018 to allow a citrus byproduct processing facility with office building and related improvements on the subject property; and

WHEREAS, 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; and

WHEREAS, on December 14th, 2018, application SE 2018-06 was distributed to the Development Review Committee for review and comments; and

WHEREAS, a Development Review Report was prepared and the report concluded application SE 2018-06 established through competent substantial evidence the application was in harmony with the LDR general intent and purpose, is not injurious to the neighborhood or to adjoining properties, or is otherwise detrimental to the public welfare provided appropriate conditions are imposed; and

WHEREAS, on February 5th, 2019, the Planning Commission held a duly noticed public hearing on the application and entered into the record the Development Review Report and all other competent substantial evidence presented at the hearing, and forwarded the record to the Board of County Commissioners (Board) with the recommendation that the Board *adopt/do not adopt* the proposed Resolution; and

WHEREAS, on February 12th, 2019 the Board held a duly noticed public hearing on the application and entered into the record the Development Review Report and all other competent substantial evidence presented at the Planning Commission and Board hearings; and

WHEREAS, the Board concluded the special exception use application SE 2018-06 established through competent substantial evidence the application was/was not in harmony with the LDR general intent and purpose, is not injurious to the neighborhood or to adjoining properties, or is otherwise detrimental to the public welfare based on the findings and conclusions therein and the conditions of approval.

NOW, THEREFORE BE IT RESOLVED BY THE DESOTO COUNTY BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:

Section 1. *Whereas clauses.* The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct are hereby incorporated by reference as part of this Resolution.

Section 2. *Development Review Report.* The Development Review Report, incorporated herein by reference, represents the written findings of fact and conclusions of law to support granting to Nuco Citrus, LLC a special exception use development order for an agriculturally related processing use subject, to the following conditions:

1. 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 unplatted 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. 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.

2. 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.

3. 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.

4. 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. 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.

6. 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.

7. 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.

8. 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.

9. The Improvement Plan shall display the wetland area boundaries and buffer setbacks and development shall be in conformance with the minimum buffer setback requirements.

10. The Improvement Plan shall provide for a safe and convenient internal pedestrianway between and among the office building and the other buildings.

11. 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.

12. 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.

Residential use		Non-residential use	
Daytime	Nighttime	Daytime	Nighttime
60 dB(A)	55 dB(A)	65 dB(A)	60 dB(A)

In addition, Nuco Citrus, LLC 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.

Number of Repetitions per 24 hours	Sound Level in dB(A)
1	90
12	80
24	70

13. 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).

14. Nuco Citrus, LLC shall maintain air quality levels that comply with the air operating permit requirements as issued by the FDEP.

15. 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.

16. 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.

17. Nuco Citrus, LLC shall not emit toxic or noxious matter at a concentration exceeding ambient 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.

18. The Nuco Citrus, LLC facility 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.

19. 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.

20. Any violation of the special exception use conditions of approval shall also be a violation of the Development Plan or Improvement Plan approval

Section 3. *Effective date.* This Resolution shall take effect immediately upon its adoption.

PASSED AND DULY ADOPTED in DeSoto County, Florida, this 12th, day of February, 2019.

ATTEST:

**DESOTO COUNTY BOARD OF
COUNTY COMMISSIONERS**

By: _____
Mandy Hines
County Administrator

By: _____
Judy Schaefer, Chairman
Board of County Commissioners

Approved as to form and legal sufficiency:

By: _____
Donald D. Conn
County Attorney

EXHIBIT 1

