

QJ Special Magistrate - Sep 25 2025
SEC Freeport Hot Mix Asphalt Plant
Project number MAJ25-000035

Summary of Conditional Use Objection

Planning Department Staff treated the asphalt use as compliant with the LDC without fully addressing the Comprehensive Plan's conditional use permit requirement. In closing remarks, the Planning Department Attorney seemed to dismiss the Comprehensive Plan inconsistency by noting that the use once existed on the site. That is not a sound basis, since the previous operation was closed and dismantled many years ago. Once the plant sat idle past the LDC's cessation window, any reactivation should be treated as a new use, which is why a DO and a QJ hearing are needed in the first place. In that circumstance, the applicant must meet current rules, including the Comprehensive Plan.

No weight should be given by staff to the fact that a plant once operated there. The LDC provides no basis to treat a long-discontinued use differently than a new use.

Details of Conditional Use Objection

Nonconforming Uses

Most land development codes include nonconforming or grandfathered use provisions. They allow an existing use to continue but generally restrict any increase in area or intensity, with the long term aim of phasing the use out or bringing it into compliance.

LDC 1.15.01. Purpose. The purpose of this Chapter is to provide for the regulation of legally nonconforming structures, lots of record, uses and signs and to specify those circumstances and conditions under which such nonconformities shall be permitted to continue. It is necessary and consistent with the regulations prescribed by this chapter that those nonconformities which adversely affect orderly development and the value of nearby property not be permitted to continue without restriction.

A central feature of these provisions is a limit on inactivity. If a nonconforming use ceases for a defined period, in this case six months, the right to re-establish that use ends. To restart it, the applicant must meet current rules.

LDC 1.15.03. Continuation of Noncomplying Structure or Nonconforming Use

A. Except as otherwise provided in this Chapter, any nonconforming lot, use, or sign lawfully existing on the effective date of this *Code* may be continued so long as it remains otherwise lawful.

B. A nonconforming use, other than a single family residential use, which has been discontinued for more than six months may not be re-established unless in conformance with this *Code* and the *Comprehensive Plan*.

Comprehensive Plan Regulation of Asphalt plants

OBJECTIVE L-1.7: The County shall direct extractive and industrial uses to appropriate areas which can support intense uses, provide extensive buffers to shield adjacent land uses, and have sufficient infrastructure. These areas typically are not encumbered by environmentally sensitive lands, conservation easements, or habitats that are intended for preservation.

Policy L-1.7.1: Industrial and Extractive Uses (IE).

(B) Industrial Use subcategory

3. Special considerations:

i. **Heavy industrial uses shall be conditional uses reviewed as a major development, regardless of size, and subject to criteria that address compatibility concerns.**

ii. Heavy industrial uses include salvage yards, construction and processing plants, **asphalt and concrete plants**, Class I and Class II landfills, extractive uses; hazardous waste collection and handling, animal processing facilities, or similar intense uses.

Land Development Code - Conditional Uses

1.13.14. Conditional Uses and Special Exceptions:

A. Conditional Uses: The zoning regulations found in Chapter 2 identify certain land uses which are only allowed in certain zoning districts as conditional uses. **These**

uses have been determined to require additional design standards to ensure compatibility with adjacent uses and or the surrounding neighborhood. If a use has been identified as a conditional use, compliance with the conditions is required for approval.

In addition to the conditions associated with the use established in Chapter 2, the Board of Adjustment must find, based upon evidence, both factual and supportive, provided by the applicant, that:

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this Land Development Code.
2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.
3. Any negative impacts of the proposed use on adjacent properties and on the public can be mitigated through the application the stated conditions, other applicable Land Development Code standards, and/or other reasonable conditions of approval.

Incorrect Code Interpretation - QJ Hearing Sep 25,2025

The testimony and comments indicated that the plant ceased operations in 2010 or 2011. Permits lapsed, equipment was removed, and there is no active use on the site. Under LDC 1.15.00 and 1.15.03.A, a nonconforming use can continue only if it remains lawful and continuous. Clearly it did not. LDC 1.15.03.B says that if a nonconforming use stops for more than six months, it may not be reestablished unless it conforms to both the LDC and the Comprehensive Plan. Because the Comprehensive Plan treats an asphalt plant as a conditional use, a conditional use permit should be required.

No weight should be given by staff to the fact that a plant once operated there. The LDC provides no basis to treat a discontinued use differently than a new use.

The QJ hearings did not establish whether the plant was considered compliant with the LDC at that time. It was also not determined to be compliant with the Comprehensive Plan prior to shutdown.

Planning Department Staff treated the asphalt use as compliant with the LDC without fully addressing the Comprehensive Plan's conditional use permit requirement. In closing remarks, the Planning Department Attorney seemed to dismiss the Comprehensive Plan inconsistency by noting that the use once existed on the site. That is not a sound basis, since the previous operation was closed and dismantled many years ago. Once the plant sat idle past the LDC's cessation window, any reactivation should be treated as a new use, which is why a DO and a QJ hearing are needed in the first place. In that circumstance, the applicant must meet current rules, including the Comprehensive Plan.

Consistency of LDC with Comprehensive Plan

There is also a consistency requirement. LDC 1.06.00 deems the LDC consistent with the Comprehensive Plan, yet the Planning Department Attorney acknowledged a conflict between the LDC's by-right label and the Comp Plan's conditional use requirement. Florida Statutes control in that situation. F.S. 163.3194(1)(a) requires development orders to be consistent with the Comprehensive Plan, and 163.3194(1)(b) says that when the LDC conflicts with the Plan, the County should provide the process and timeline to bring the LDC into consistency and the Comprehensive Plan controls in the interim. Proceeding under the less strict LDC standard does not follow that direction. If the by-right conclusion (i.e., no consistency review) rests on interpretation despite the conflict, that decision appears appealable under LDC 1.08.00.H(1) and 1.10.02.D(1).

In other words, the Comprehensive Plan takes precedence over the LDC.

Next Step

If the opposition wants to move this forward, here are the options that should be considered:

- appeal the determination that no conditional use permit is required; challenge any reliance on the discontinued use to claim by-right status
- ask the County why, after acknowledging the conflict, it did not follow F.S. 163.3194(1)(a)–(b)
- petition the state planning agency under F.S. 163.3213 for an administrative review and request a pause in local proceedings until there is a determination.