

MEMORANDUM

FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

TO: Land Development Code
Advisory Committee Members

DATE: February 25, 2019

FROM: Audra M. Ennis
Zoning Manager



RE: **Land Development Code (LDC) Amendments**
Chapter 12, Resource Extraction

On November 17, 2015, the Board of County Commissioners (BoCC) directed staff to identify amendments to the Lee Plan and Land Development Code to align with the BoCC's strategic planning initiatives, streamline, eliminate potential liabilities, reduce redundancy/conflict within and between the Lee Plan and Land Development Code, and relocate regulatory provisions to the Land Development Code.

The attached LDC amendments are intended to implement the pending amendments to the resource extraction and limerock mining provisions of the Lee Plan (CPA2018-10014) prepared in accordance with this direction. The amendments establish a requirement for a mandatory public information meeting (Policy 10.2.8) to provide an additional public input opportunity, increase the setback for mining activities from residential property lines, and clarify the deviation and variance approval process as it applies to Chapter 12.

The Local Planning Agency (LPA) reviewed the proposed Lee Plan and LDC amendments on January 28, 2019 and provided the following comments:

- The proposed 2,000-foot setback from residential property lines based on consultant opinion in recent cases may not be appropriate given the limited analysis justifying the setback change. The LPA recommended retaining the 150-foot setback currently contained in the LDC;
- The LPA recommended courtesy mailings for the public information session be required for properties within 750 feet of the perimeter of a property subject to a Mining Excavation Planned Development; and
- The LPA recommended considering additional language regarding compatibility with airport facilities.

Staff responses to the recommendations of the LPA are noted in the staff annotations preceding each of the sections subject to change.

Staff requests that the LDCAC recommend approval of the proposed LDC Amendments.

Sec. 12-107. - Lee Plan consistency.

Staff Note: Add new Lee Plan Policy reference for airport facilities consistent with proposed Lee Plan amendments.

The following Lee Plan policies must be adhered to in applying for and conducting mining activities:

- (1) Mining activities and mining reclamation plans in or near important water resource areas must be designed to minimize the possibility of contamination of the water during mining activity and after completion of the reclamation.
- (2) Mining operations must meet or exceed local, state and federal standards for noise, air, water quality, and vibration. (Lee Plan Policy 7.1.1)
- (3) Mining activities must be located and designed so as to minimize adverse environmental impacts and water resource impacts.
- (4) Mining activities, and industrial uses accessory to mining activities, must:
 - a. Have adequate fire protection, transportation facilities, wastewater treatment and water supply; and
 - b. Not precipitate significant negative effects with respect to dust, glare, light trespass and noise on surrounding land uses and natural resources.
- (5) Mining activities and reclamation efforts must facilitate the connection of natural resource extraction lakes and borrow lake excavations into a system of interconnected lakes and flowways that will enhance wildlife habitat values, and strengthen environmental benefits.
- (6) Mining operations must not result in adverse vibration, noise, air, water quality, or hydrology impacts on existing and planned airport capacities, facilities, and operations. (Lee Plan Policy 47.2.7)

(Ord. No. [08-21](#), § 2, 9-9-08)

Sec. 12-108. - Approval process for mine excavation planned development.

Staff Note: Add provision requiring public information meeting consistent with Lee Plan amendments. LPA recommended language requiring a courtesy mailing to properties within 750 feet of a property subject to MEPD approval in addition to advertising requirement for public information session. Staff did not revise language since notice would direct inquiries to staff prior to the filing of an MEPD application.

- (a) *Process objective.* The objective of this process is to provide a unified process based upon comprehensive information submitted for review of both the use and development rights. The process is designed to minimize review and resubmittal time frames as well as the time elapsing between approval of the proposed mining activity and actual resource extraction on the mine site.
- (b) *Effect of Chapters 10 and 34.* The process and resulting approvals are not subject to the provisions in Chapter 10 or Chapter 34 unless specifically stated.
- (c) *Mandatory pre-application meeting.* The applicant must attend a pre-application meeting with appropriate County staff prior to submittal of the MEPD application. Appropriate County staff representatives from the following departments must be in attendance at this meeting: Zoning, Development Services, Department of Transportation, Natural Resources and Environmental Sciences; and local representatives from the Department of Environmental Protection, Florida Department of Transportation, South Florida Water Management District and the Army Corps of Engineers should also be invited to attend. During the meeting the applicant must be prepared to discuss the following topics: location of the project, extent/boundaries of the mine project, size of

mine, depth of the mine, amount of material the applicant anticipates will be excavated over the life of the mine, proposed duration of mine activity, mine design alternatives including cell mining, potential associated mine activities, phasing, water issues, transportation impacts, watershed boundaries, habitat issues, environmental issues, water monitoring, surrounding uses, Lee Plan compliance, and state and federal permit issues. The applicant must bring maps and other documentation to facilitate discussion with respect to these issues. Subsequent to the meeting, the County will provide the applicant with a memorandum outlining issues relevant to the applicant's future submittal. This memorandum is intended to assist the applicant in preparing the formal submittal and does not confer any specific rights to the applicant with respect to approvals or submittals.

(d) Mandatory public information meeting. The applicant must hold a public information meeting at a location within three miles of the affected Community Plan area prior to submittal of the MEPD application. The applicant must provide a meeting space and any security measures adequate to accommodate the projected attendance. Advance notice of the meeting must be published in a publication of local distribution at least ten (10) calendar days prior to the meeting, with proof of publication provided to the Department of Community Development at the time of application. At the meeting, the applicant must present a general overview of the proposed MEPD and provide the opportunity for public input. A meeting summary document containing the following information must be submitted at the time of application: the date, time, and location of the meeting; a list of attendees; a summary of concerns or issues raised during the meeting; and the applicant response to concerns or issues raised.

(de) *Mine Excavation Planned Development (MEPD) approval.* The MEPD approval is issued by the Board of County Commissioners based upon the recommendations of the County staff and Lee County Hearing Examiner in accordance with sections 34-83 and 34-145(d). A hearing before the Board of County Commissioners will be scheduled after the applicant submits a MEPD application on the form specified by the County, achieves sufficiency for hearing before the Hearing Examiner, and obtains a recommendation from the Hearing Examiner to the Board for consideration at the end of a regular Board Zoning agenda day. The specific Board hearing date will be determined by County staff.

Unlike typical chapter 34 zoning approvals, the MEPD approval will encompass and be based upon zoning issues as well as technical information and detail traditionally reserved for review under chapter 10. The Board's decision with respect to the MEPD application will be set forth in a resolution, along with the findings and conclusions applicable to the approval or denial. A resolution approving the MEPD will include conditions applicable to the mine operation along with a detailed set of plans for site development and subsequent mine operation activity.

(ef) *Mine development order (MDO).* The MDO is intended to address all on-site and off-site improvements necessary to carry out the mine operation as approved by the Board and is based upon the conditions and exhibits that constitute the MEPD resolution. Therefore, the County encourages concurrent submittal and review of the MEPD and MDO applications in order to achieve the time efficiencies anticipated by this mine permitting process.

Review of the MDO application requires the County staff to verify that the site construction plans accurately and substantively reflect the conditions of the MEPD approval. The applicant may not propose substantive changes or amendments to the MEPD approval resolution through the MDO process. However, the Director has the discretion to administratively approve, as part of the MDO, nonsubstantial changes to the MEPD approval necessary to achieve the intent of the MEPD approval as granted by the Board.

MDO applications and submittals will be processed in the manner set forth in section 10-108 through 10-110.

A MDO will not be issued to allow activity within an area under Army Corps of Engineers' jurisdiction, as identified by the permit application submitted to the State/Federal agency, prior to obtaining the necessary State/Federal approvals.

- (fg) *Mine operation permit (MOP)*. A MOP approval allows the mine operator to commence off-site hauling, and to place into use accessory operations on the mine site such as concrete and asphalt batch plants. The items that must be complete prior to the issuance of a MOP approval will be specified in the MEPD resolution and the MDO approval.

On-site and off-site improvements and related documents that will typically precede issuance of a certificate of compliance under the MDO, which results in the issuance of the MOP and allows off-site hauling of extracted resources or operation of accessory mine facilities, may include, but are not limited to:

- (1) Installing off-site turn lanes and other on-site roadway improvements.
- (2) Constructing on-site truck staging area.
- (3) Installing truck wash and tire wash facilities.
- (4) Constructing on-site paved ingress/egress roads from the front gate to the scale house.
- (5) Installing on-site groundwater and surface water monitoring wells.
- (6) Installing pollution contamination containment structures and devices.
- (7) Installing stormwater pollution prevention devices such as silt barriers and turbidity control devices as required.
- (8) Approval of sureties related to pavement maintenance, reclamation etc.
- (9) Constructing perimeter berms and buffers.
- (10) Installing dewatering hydraulic recharge trenches and staff gauges for monitoring water elevation in trenches.
- (11) Compliance with all conditions of the ERP and water use permits relative to excavation activities.
- (12) Approval of a transportation impact mitigation plan.
- (13) Installation of required permanent traffic count stations.
- (14) Installation of utilities.
- (15) Recording conservation easements.
- (16) Other items required under conditions of the MEPD.

The MOP approval will be contained in the certificate of compliance issued by the Director with respect to full compliance with the MDO approval. The MOP will be issued only after review of all required applicant certifications (engineer, landscape architect, etc) and verification that all MDO permit requirements are complete based upon County mine site inspections. Inspections will be performed by appropriate County departments to verify completion in the manner set forth in chapter 10 as applicable to the issuance of a development order certificate of compliance. The MOP is valid for ten years. The date the MOP is issued will establish the effective date for purposes of determining when the MOP must be renewed.

- (gh) *Renewal of mine operation permit*. A MOP renewal allows the mine operator to continue full operation of the mine and related accessory mine uses in accord with all permit approvals. A MOP for mines approved after September 1, 2008, must be renewed in accordance with section 12-115. Existing mines must obtain MOP renewal in accord with section 12-121.

- (hi) *Sufficiency of applications and review*. Applications submitted with respect to zoning and development approval under this article will be reviewed by County staff within 30 business days after receipt; and, a letter advising the applicant of the status of the application will be provided. If

insufficient, the letter will include a brief explanation as to why the application is not complete for review and request the necessary additional information. The applicant will have 60 days to submit a written response and the requested information. If the applicant requires more than 60 days to submit a response, the County may grant an additional 60 days to respond based upon the applicant's written request to the Director substantiating diligent pursuit of the response or resubmittal. If the applicant fails to submit a response or request additional time within the 60-day period, the County may deem the application withdrawn. This submittal and review process will be repeated until the application is found sufficient for hearing, if a rezoning request, or approval of a MDO/MOP request.

Once an application has been found sufficient for hearing through the rezoning process, any new information submitted by the applicant or changes made to the information reviewed by County staff in preparing its recommendation, may at the discretion of the Director, be grounds for the County staff to defer or continue the public hearing depending on the advertised status of the hearing. County staff may also revoke the finding of sufficiency and withdraw the case from Hearing Examiner consideration without regard to the status of the advertising.

(Ord. No. [08-21](#), § 2, 9-9-08; Ord. No. [11-08](#), § 5, 8-9-11)

Sec. 12-113. - Site design requirements.

Staff Note: Clarify deviation and variance applicability. Add compatibility language for public facilities and airports per LPA comment. Delete 2,000-foot residential setback per LPA comment. Revised 660-foot setback is consistent with required setbacks for uses with similar impacts (see Sec. 34-2443). Modify language for consistency throughout subsection and strike adjacent to ensure all properties within setback area receive equal treatment.

(a) *Design Standards.* Mining activities will be subject to the following design standards. The Board of County Commissioners may modify these standards as a condition of approval when in the public interest, or where they determine a particular requirement unnecessary due to unusual circumstances.

(b) *Mining operations must be located, designed and operated to:*

- (1) Be compatible with surrounding private and publicly owned lands with special consideration given to protection of surrounding conservation and preservation ~~owned lands and public facilities and airports.~~
- (2) Avoid adverse effects to existing agricultural, residential, public, and ~~or~~-conservation activities in the surrounding area.
- (3) Avoid adverse effects from dust, noise, vibration, lighting, ~~or~~ and odor, and impacts to air, water quality, and hydrology on surrounding land uses, and natural resources, and existing and planned airport capacities, facilities, lands, and operations.
- (4) Comply with the outdoor lighting provisions (except fixture mounting height standards) of this Code.
- (5) Cause minimal impacts to onsite and offsite ambient surface or groundwater levels quality and quantity.
- (6) Maintain established premining wet and dry season water level elevations and hydroperiods to restore and sustain water resources and adjacent wetland hydrology on and off-site during and upon completion of the mining operations.
- (7) Preserve and enhance existing natural flowways that the County deems important for local or regional water resource management.

- (8) Restore historic flowways that the County deems important for local or regional water resource management.
 - (9) Preserve indigenous areas that are occupied wildlife habitat to the maximum extent possible.
 - (10) Provide interconnection to off-site preserves and conservation lands via indigenous preservation, flowway preservation or restoration, and appropriate planted open space or buffer areas.
 - (11) Maintain minimum surface and groundwater levels within the site boundaries as deemed appropriate by Natural Resources staff during the MEPD approval process.
 - (12) Be designed to mimic or restore the natural system predisturbed water budget.
- (c) *Setbacks for excavation site.*
- (1) Excavations are prohibited within:
 - a. 150 feet of an existing street right-of-way line or easement; and
 - b. 150 feet of any private property line under separate ownership.
 - c. ~~660~~150 feet from of any adjacent residential property line.

In all cases, the most restrictive setback will apply.
 - (2) A 500-foot radial setback is required from existing permitted public well sites for mining operations approved after June 24, 2003.
 - (3) To ensure protection of surface and groundwater resources, appropriate excavation setbacks from preserve areas and adjacent properties will be determined through the environmental analysis and review process based upon site specific conditions.
 - (4) The Board of County Commissioners may allow reduced setbacks as part of the MEPD approval provided:
 - a. The reclamation plan indicates how access will be made to future development;
 - b. The reclamation plan indicates that the setback area will not be developed after restoration; and
 - c. A closer setback will not be injurious to other property owners or the water resources.
- (d) *Setbacks for accessory buildings or structures.*
- (1) Setbacks for accessory buildings or structures must be shown on the engineered site plan set.
 - (2) No crusher, mixing plant, bin, tank or structure directly involved in the production process may be located less than:
 - a. 660 feet from any residentially zoned property or use under separate ownership; or
 - b. 250 feet from all nonresidential zoning districts under separate ownership.

To allow flexibility, the general area of accessory buildings, structures and processing facilities must be shown on the site plan with the appropriate setbacks noted.
- (e) *Minimum lot size.* All uses permitted under this subdivision must have a minimum lot size of ten acres.
- (f) *Security.* All entrances to mining activity areas must be restricted from public access during working hours and locked at all other times.
- (g) *Reclamation Standards.* Mining operations will be subject to the reclamation standards set forth in section 12-119.
- (h) *Transportation impacts.* Mine operations will be subject to the transportation mitigation standards set forth in section 12-116. This section requires the mine operator to be fully responsible for maintaining,

repairing or replacing the accesses to the mine within the limits of the site related improvements as defined in section 12-116(c)(3).

- (i) *Fire protection.* The mining operation must be designed to provide adequate fire protection, transportation facilities, wastewater treatment and water supply. The owner or operator, at its sole cost, will be responsible for providing these services and facilities in the event of a deficiency.
- (j) *Maximum depth.* The Board of County Commissioners will establish maximum excavation depths and mining activity depth after reviewing the findings and recommendations of the South Florida Water Management District and County staff, as applicable. The permitted depth may not exceed the depth permitted by the South Florida Water Management District or County staff, as applicable and may not penetrate through impervious soil or other confining layer that presently prohibits intermingling of two or more aquifers.
- (k) *Certificate to dig; historic management plan.* When applicable, an archaeological/historic resources certificate to dig must be obtained from the County and submitted as part of the application. Florida Master Site File forms for historical or archaeological resources, facade or other historic or scenic easements related to the subject property or reports prepared by a professional archaeologist as may be required by chapter 22 must be submitted to the Director.
- (l) *Open Space.* For purposes of chapter 12 only, open space requirements applicable to the mine will be deemed satisfied if the mine site maintains the buffers, indigenous area, setbacks, and wildlife habitat areas required under this chapter or as otherwise provided in the approved MEPD resolution. The lake (or mine footprint) is considered the impacted area and is not included as a means of meeting open space requirements otherwise contemplated by the underlying zoning approvals.
- (m) *Indigenous Preservation and Replanting.* Mines must provide 25 percent of the project site as indigenous preservation or as on-site indigenous replanting if the property does not contain existing indigenous plant communities.

Created marsh wetland littoral zone areas may be counted towards the on-site indigenous preservation requirements.

On-site indigenous replanting plans approved by the County must include a minimum of four native tree and four native shrub species. Native trees must be installed at a minimum of 100 feet on center per acre and native shrubs must be installed at a minimum of 50 feet on center per acre. 50 percent of the native trees must be three feet tall and the balance of the trees may be one foot tall. Native shrubs must be installed at one gallon container size. No more than 25 percent of one species can be utilized. Indigenous replanting areas must have 80 percent survivability for a period of five years and be maintained in perpetuity. The indigenous preserve and replanting areas must be designed to provide interconnectivity to adjacent preserves and conservation lands with a particular emphasis on the incorporation of existing and historic flowways. An indigenous management plan must be submitted to address the long term maintenance of the on-site preservation/conservation easement areas.

The created marsh wetland littoral zone, indigenous preserves, replanted indigenous areas, preserved and restored flowways, buffers, and open space used to meet County requirements must be maintained in perpetuity even with a change in land use.

- (n) *Invasive Exotic Removal.* An invasive exotic removal plan must be adopted as part of the MEPD approval that is acceptable to environmental sciences. The removal may be phased with long term maintenance continuing in perpetuity. The invasive exotics to be removed must be consistent with section 10-420(h).
- (o) *Buffers.* Buffers are required in accordance with the following standards.
 - (1) The following buffers must be provided when the mine property abuts the listed use or zoning district, whichever is most restrictive:
 - a. *Right-of-way:*
 - 1. Minimum 50 feet width, maintained at natural grade;

2. Every 100 feet of the right-of-way buffer must consist of:
 - Ten ten-foot trees with two-inch caliper and four-foot spread
 - Ten 5-foot trees with one-inch caliper and two-foot spread
 - 100 native shrubs 24 inches in height
 3. 50 percent of the required trees must be native pines; 30 percent must be large native canopy trees (e.g. live oaks); and 20 percent native palms or appropriate native wetland vegetation.
- b. *Residential:*
1. Minimum 150 feet width, maintained at natural grade;
 2. Every 100 feet of the residential buffer must consist of:
 - Fifteen ten-foot trees with two-inch caliper and four-foot spread
 - Ten five-foot trees with one-inch caliper and two-foot spread
 - 150 native shrubs 24 inches in height
 3. 50 percent of the required trees must be native pines; 30 percent must be large native canopy trees (e.g. live oaks); and 20 percent native palms or appropriate native wetland vegetation.
- c. *Agricultural:*
- Minimum 50-foot width, maintained at natural grade.
- d. *Conservation Lands:*
1. Minimum 100-foot width, maintained at natural grade;
 2. Every 100 feet of the conservation lands buffer must consist of:
 - Ten ten-foot trees with two-inch caliper and four-foot spread
 - Ten five-foot trees with one-inch caliper and two-foot spread
 - 100 native shrubs 24 inches in height
 3. Seeded with native herbaceous plants.
- (2) *Standards applicable to all Buffers.*
- a. Vegetation must be allowed to grow to natural height and form. Trimming is limited to health and safety maintenance pruning (i.e. shrubs, trees, and palms may not be hedged or formally shaped).
 - b. Buffer plantings must occur at grade, unless otherwise conditioned within the MEPD resolution.
 - c. Existing native vegetation may be used to meet the buffer requirements.
 - d. The County may grant a request to use smaller plant material, as long as the equivalent overall height is achieved per linear foot.
 - e. Buffer plants may not be installed in a straight line. Plantings must be installed in a random fashion throughout the width of the buffer to mimic a natural system.
 - f. The Director has the discretion to require a more restrictive buffer when deemed necessary for compatibility in accord with the following:

1. If a berm is deemed necessary by the County, it must be located at the distance closest to the mine within the buffer. Berms may not exceed 3:1 slope and must be limited to a maximum height of eight feet.
 2. If any portion of the buffer plantings is to occur on the berm, a specific condition must be included in the MEPD resolution or MDO approval.
- g. Buffers must be installed prior to issuance of a MOP (via final MDO certificate of compliance) and prior to the excavation of materials for hauling off-site.
 - h. Created marsh wetland littoral zone areas, on-site indigenous preserve areas and wildlife habitat areas may be counted towards the buffer area requirements.
- (p) *Wildlife habitat.* In order to provide interconnectivity of wildlife habitat areas, including Florida panther and Florida black bear habitat, and to allow these large mammals to move locally within their range, projects located within any USFWS Florida panther protection zone must be designed to allow movement of Florida panther and Florida black bear through indigenous preserves or appropriately planted buffer and open space areas. If existing adjacent uses are not suitable for Florida panther or Florida black bear, then a deviation from this requirement may be requested during the MEPD application process.
- (1) Local wildlife habitat areas must be a minimum 300 feet wide, designed to allow mammals to traverse the project property, and connect to adjacent preserves or conservation lands that are existing or anticipated to occur in the future.
 - (2) Prior to the issuance of a MOP, the 300-foot wide area must be planted with a continuous native shrub hedge (33 shrubs per 100 linear feet; minimum three-gallon container size) along the perimeter of the habitat area and a minimum of 20 native trees per 100 linear foot clustered (minimum ten trees per cluster; minimum 7-gallon container size) within the habitat area to provide cover. Existing native vegetation may be used to meet the planting requirement.
 - (3) The wildlife habitat plantings may count toward any buffer, general tree, or indigenous replanting requirement if they meet the minimum standards for buffers, general trees, or indigenous replanting.
 - (4) Preferred vegetation includes, but is not limited to:

Trees: live oak (*Quercus virginiana*), laurel oak (*Quercus laurifolia*), south Florida slash pine (*Pinus elliottii* var. *densa*), cypress (*Taxodium distichum*; *Taxodium ascendens*)

Shrubs: wax myrtle (*Myrica cerifera*), cocoplum (*Chrysobalanus icaco*), saw palmetto (*Serenoa repens*), Florida privet (*Forestiera segregata*).
 - (5) Created marsh wetland littoral zone areas, on-site indigenous preserve areas and buffer areas may be counted towards the wildlife habitat area requirements.
- (q) *Truck and tire wash.* The use of a truck and tire wash system is mandatory for all projects. The truck and tire wash must:
- (1) Be installed on the property with a minimum setback of 150 feet from the project boundary;
 - (2) Be located on the paved access connection at least 100 feet from the interior terminus of the paved access connection; and
 - (3) Provide water quality treatment and recycling for the truck and tire wash water.
- (r) *Truck staging.* Truck staging within limits of either public or private roads external to the mine site is prohibited. The mine is required to provide adequate on-site stacking space to accommodate staging of mine trucks arriving at the site prior to the opening of the mine for active hauling operation.
- (s) *Best management practices.* Contractors, sub-contractors, laborers, material men, and their employees using, handling, storing, or producing regulated substances must use the applicable best management practices generally accepted in the industry.

- (t) *Pollution prevention plan.* A Pollution Prevention Plan must be approved by the County and kept on the mine site. The plan must address potential sources of contamination and provide Best Management Practices (BMPs) to avoid on-site and off-site surface water and groundwater contamination. The plan must include an inspection program to ensure the proper operation of the implemented BMPs and contaminant spill containment and disposal procedures.
- (u) *Deviations and variances.* A deviation or variance from the design standards may be granted only through the MEPD approval process except as otherwise expressly provided in this section.

(Ord. No. [08-21](#), § 2, 9-9-08)