

ORDINANCE NO. 08-21

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) CHAPTERS 10 AND 34; AND CREATING CHAPTER 12 AND APPENDIX O PERTAINING TO MINING AND EXCAVATION; AND

AMENDING LDC CHAPTER 10, DEVELOPMENT STANDARDS, AMENDING APPLICABILITY OF REQUIREMENTS (§10-101); TYPES OF DEVELOPMENT ENTITLED TO LIMITED REVIEW (§10-174); AMENDING EXCAVATIONS (§10-329); LANDSCAPE REQUIREMENTS FOR SPECIFIC USES (§10-424); AND

CREATING LDC CHAPTER 12, RESOURCE EXTRACTION, TO ESTABLISH ARTICLE II, MINING AND EXCAVATION; PROVIDING FOR LEGISLATIVE FINDINGS (§12-101); PURPOSE AND INTENT (§12-102); APPLICABILITY (§12-103); EXEMPTIONS (§12-104); DEFINITIONS (§12-105); APPROVALS REQUIRED (§12-106); LEE PLAN CONSISTENCY (§12-107); APPROVAL PROCESS FOR MINE EXCAVATION PLANNED DEVELOPMENT (§12-108); ISSUANCE OF APPROVALS; DURATION OF APPROVALS (§12-109); APPLICATION SUBMITTALS (§12-110); MINE SITE PLAN; SITE MAP AND ENGINEERING PLAN SET (§12-111); HEARING PROCESS (§12-112); SITE DESIGN REQUIREMENTS (§12-113); STATE AND FEDERAL PERMITS (§12-114); MINE OPERATION PERMIT RENEWAL REQUIREMENTS (§12-115); TRANSPORTATION ISSUES (§12-116); WATER QUALITY AND QUANTITY ISSUES (§12-117); MONITORING REQUIREMENTS; INSPECTIONS (§12-118); RECLAMATION REQUIREMENTS (§12-119); SURETY OR ASSURANCE OF COMPLETION (§12-120); EXISTING MINE OPERATIONS (§12-121); POST MINING USE OF LAND (§12-122); ENFORCEMENT; VIOLATIONS (§12-123); APPEALS (§12-124); AND

AMENDING LDC CHAPTER 34, ZONING; AMENDING FUNCTIONS AND AUTHORITY OF BOARD OF COUNTY COMMISSIONERS (§34-83); FUNCTIONS AND AUTHORITY OF HEARING EXAMINER (§34-145); POWERS AND DUTIES OF DEPARTMENT OF COMMUNITY DEVELOPMENT (§34-172); GENERAL PROCEDURE FOR APPLICATIONS

REQUIRING PUBLIC HEARING (§34-201); GENERAL SUBMITTAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-202); ADDITIONAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-203); EXCAVATIONS (§34-207); DENIALS AND RESUBMISSION OF APPLICATIONS (§34-211); REQUIRED HEARINGS (§34-232); PRELIMINARY REVIEW AND NOTICE CERTIFICATION (§34-233); EMPLOYMENT OF PLANNED DEVELOPMENT DESIGNATION (§34-341); PREAPPLICATION CONFERENCE (§34-372); APPLICATION (§34-373); DURATION OF RIGHTS CONFERRED BY ADOPTED MASTER CONCEPT PLAN (§34-381); OPEN SPACE (§34-414); DISTRICTS ESTABLISHED (§34-611); USE REGULATIONS TABLE FOR AGRICULTURAL DISTRICTS (§34-653); USE REGULATIONS TABLE FOR INDUSTRIAL DISTRICTS (§34-903); PURPOSE AND INTENT OF PLANNED DEVELOPMENT DISTRICTS TO CREATE MINE EXCAVATION PLANNED DEVELOPMENT (MEPD) DISTRICT (§34-931); REGULATION OF LAND USE IN PLANNED DEVELOPMENTS (§34-932); PERMITTED USES (§34-933); USE REGULATIONS TABLE FOR PLANNED DEVELOPMENT DISTRICTS (§34-934); PROPERTY DEVELOPMENT REGULATIONS (§34-935); AMENDING GENERAL REQUIREMENTS FOR ALL EXCAVATION ACTIVITIES (§34-1651); REPEALING PURPOSE OF SUBDIVISION OF MINING SUBDIVISION II (§34-1671); COMPATIBILITY (§34-1672); PERMIT REQUIRED (§34-1673); GENERAL POLICIES FOR APPROVAL AND OPERATION (§34-1674); APPLICATION FOR A GENERAL MINING PERMIT; ISSUANCE OF PERMIT (§34-1675); APPLICATION FOR A MINING OPERATION PERMIT (§34-1676); DURATION OF MINING OPERATION PERMIT (§34-1677); RENEWAL OF PERMITS (§34-1678); ADDITIONAL PHASE APPROVALS (§34-1679); INSPECTIONS (§34-1680); SITE REQUIREMENTS (§34-1681); AND, AMENDING USES APPROVED BY SPECIAL EXCEPTION OR PERMIT (§34-3205); AND

CREATING LDC APPENDIX O TO ADD TABLE OF CHEMICAL CONSTITUENTS; AND

PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 1 of the Florida Constitution and Chapter 125 of the Florida Statutes, Lee County is authorized and required to protect the public health, safety and welfare of its citizens and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, Goal 24 of the Lee County Comprehensive Land Use Plan (Lee Plan) mandates that the county maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code, which contains regulations applicable to the development of land in Lee County; and

WHEREAS, Lee Plan Goal 10 provides protection for areas containing identified natural resources from incompatible urban development while requiring natural resource extraction operations to minimize adverse impacts on surrounding land uses and other natural resources; and

WHEREAS, Lee Plan Goals 60 and 61, along with the related objectives and policies, contemplate creation of a County Surface Water Management Master Plan that recognizes existing watershed basins, natural flow ways and historic drainage patterns in conjunction with development permit approval; and

WHEREAS, Lee Plan Goal 63 contemplates protection of the County's groundwater supplies from activities that may potentially deplete or degrade the public potable water supply; and

WHEREAS, Lee Plan Goal 107 requires the County to manage its functioning and interconnected ecosystems to maintain and enhance native habitat, plant and animal species diversity, water quality/resources and natural surface water characteristics; and

WHEREAS, Lee Plan Goals 115 and 117 require the County to maintain water quality and protect the natural hydrologic systems within Lee County to ensure a continued water resource is available; and

WHEREAS, geologic reports assert that Lee County is one of several counties containing deposits of limestone suitable for use as construction material aggregate, with the majority of these deposits being located in the Density Reduction/Groundwater Resource land use category; and

WHEREAS, limestone deposits are generally co-located in areas that are encompassed by wetlands, native vegetation areas, and unique wildlife habitat; and

WHEREAS, the extraction of limestone deposits as part of the mining process involves activity that is not compatible with less intense uses; involves mine specific roadway impacts; affects historic surface and groundwater flows; and, precipitates the loss of natural habitat and vegetation areas in order to retrieve subsurface mineral resources; and

WHEREAS, the Board enacted a moratorium on the processing of applications for rezoning and Comprehensive Plan amendments within the DRGR area in order to allow the County an opportunity to study and implement a plan to address the competing interests applicable to the development and conservation of areas that hold a variety of natural resources; and

WHEREAS, in accord with the Board's direction at the time the moratorium was adopted, the County has conducted a detailed review of its land development regulations regarding the approval of mine excavation activity and desires to amend the Land Development Code; and

WHEREAS, the proposed Land Development Code regulations are intended to ameliorate the affects of mine excavation activity on surrounding roadways, nearby residential uses, water resources, air quality, and wildlife and vegetative habitat, while allowing the extraction of natural resources (limestone) necessary to benefit Lee County citizenry; and

WHEREAS, the proposed regulations are intended to create a consolidated Board review and approval process that will afford greater protection to water and other natural resources over time while allowing the aggregate needs of Lee County to be satisfied in an effective and cost efficient manner; and

WHEREAS, the Board finds adoption of proposed Land Development Code Chapter 12 pertaining to Resource Extraction is reasonable, appropriate and in the best interest of the public health, safety and welfare of Lee County; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on July 28 and August 25, 2008 and proposed a number of revisions that have been incorporated into the ordinance

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 10

Lee County Land Development Code Chapter 10 is amended as follows with strike through text identifying deletions and underlined text indicating additional language.

CHAPTER 10

DEVELOPMENT STANDARDS

ARTICLE II. ADMINISTRATION

DIVISION 2. DEVELOPMENT ORDERS

Subdivision II. Procedures

Sec. 10-101. Applicability of requirements.

(a) *Development orders.* All developments, as defined in this chapter, including subdivisions, are required to obtain a development order prior to commencing any land development activities or receiving any development permit, including a building permit, with the exception of the following, which are not subject to review pursuant to this chapter except as noted herein:

(1) through (9) *No change.*

(10) Mine Excavation Planned Developments (or existing mines as defined in section 12-121) issued in accordance with chapter 12.

(b) and (c) *No change.*

DIVISION 3. LIMITED REVIEW PROCESS

Sec. 10-174. Types of development entitled to limited review.

The following types of development may be processed in accordance with this division:

(1) through (7) *No change.*

(8) ~~An excavation or mining operation that is subject to chapter 34, sections 34-1651 through 34-1681 and that received a general excavation permit, or a renewal permit, from the Board of County Commissioners after August 1, 1984.~~ Reserved.

(9) through (12) *No change.*

ARTICLE III. DESIGN STANDARDS AND REQUIREMENTS

DIVISION 3. SURFACE WATER MANAGEMENT

Sec. 10-329. Excavations.

(a) *Applicability.* This section provides the permitting and development order requirements for all excavations except:

(1) and (2) *No change.*

(3) Excavations for mining activities regulated by ~~sections 34-1651 through 34-1684~~ under chapter 12;

(4) and (5) *No change.*

(b) *Excavation types and required approvals.* Excavation are generally constructed either for mining operations, for stormwater retention or as a development site amenity. Table 1 summarizes the various types of excavations and the permits and approvals required for each excavation type.

TABLE 1: TYPES OF EXCAVATIONS, REGARDLESS OF SIZE, AND THE PERMITS AND APPROVALS REQUIRED FOR EACH EXCAVATION TYPE

<i>Excavation Type</i>	<i>Excavated Materials Destination</i>	<i>Permits/Approvals Required¹</i>
Excavations for an agricultural use or as an amenity to a single-family residence.	ON-SITE OR less than 1,000 cubic yards of material to be moved off-site.	Notice of Intent to Commence Water Retention Excavation Application.
	OFF-SITE - Between 1,000, but less than 10,000 cubic yards to be moved off-site	1. Type 12 Limited Review Development Order; 2. SFWMD permit (if applicable); and 3. An approved Excess Spoil Removal Plan
	OFF-SITE - 10,000 or more cubic yards to be moved off-site.	1. Type 12 Limited Review Development Order; 2. SFWMD permit (if applicable); and 3. Either a) an approved "Excess Spoil Removal Plan"; OR b) Planned Development Zoning with "mining" or "excess spoil removal" as an approved use. The decision as to whether a) or b) above will be required will be determined by the director, based on conditions specified in subsection (c)(3).

¹The requirements for planned developments ~~within zoning approval for mining with excess spoil removal as an approved use area~~ specified in Chapter 34, Article VII, Division 15, Subdivision II. Where the primary use of the site is related to mine activity, an MEPD approval must be obtained under chapter 12 prior to removal of materials from the site.

Development project - stormwater retention, i.e. lakes and ponds, etc. where the material to be moved off-site qualifies as "Surplus material" or "excess material".	ON-SITE	1. Development Order; and 2. SFWMD permit (if applicable)
	OFF-SITE - Material to be moved off-site is less than 20,000 cubic yards in volume.	1. Development Order; and 2. SFWMD permit (if applicable); 3. An approved "Excess Spoil Removal Plan";
	OFF-SITE - Material to be moved off-site is 20,000 or more cubic yards in volume.	1. Development Order; and 2. SFWMD permit (if applicable); 3. Either a) an approved "Excess Spoil Removal Plan"; OR b) Planned Development Zoning with "mining" or "excess spoil removal" as an approved use. The decision as to whether a) or b) above will be required will be determined by the director, based on conditions specified in subsection (c)(3).
Development project - stormwater retention, i.e. lakes and ponds, where the material to be moved off-site does not qualify as "surplus material". OR General mining	OFF-SITE	1. Planned Development Zoning with "mining" listed as an approved use; and 2. Development Order; and 3. SFWMD permit; and 4. An Approved Excess Spoil Removal Plan

(c) *No change.*

(d) *Standards.* All new excavations for water retention and detention are subject to the following standards:

(1) through (5) *No change.*

(6) *Test borings.* Test borings must be conducted in conformity with section ~~34-1675(b)(5)~~ 12-110(18) when required by the director of zoning and development services.

(7) *No change.*

(8) *Planned Development Zoning and General Mining Permit.* If the director determines the project does not qualify for administrative approval under subsection 10-329(c) "Procedures," then the ~~developer~~ property owner must apply for mine excavation planned development zoning (MEPD) and a general mining - mine operation permit (MOP) pursuant to ~~section 34-1671 et seq chapter 12.~~ Approval from the Board of County Commissioners must be obtained prior to the removal of any materials from the excavation site.

(9) *No change.*

(e) *No change.*

ARTICLE III. DESIGN STANDARDS AND REQUIREMENTS

DIVISION 6. OPEN SPACE, BUFFERING AND LANDSCAPING

Sec. 10-424. Landscape requirements for specific uses.

The following uses require landscaping or screening beyond the minimum standard requirements:

Recreational vehicle planned developments, section 34-939(a)(3).

Private recreational facilities planned developments, section 34-941.

Display, sale, rental or storage facilities for motor vehicles, boats, recreational vehicles, trailers, mobile homes or equipment, section 34-1352.

Wireless communications facilities, section 34-1447(c)(4)(c).

Essential services and facilities, section 34-1616(b).

Mining, ~~section 34-1674(b)(8)~~ chapter 12.

Residential project walls, section 34-1743(b)(3).

Open storage, section 34-3005(b)(1).

San Carlos Island Redevelopment Overlay Districts, Chapter 33.

SECTION TWO: CREATION OF LAND DEVELOPMENT CODE CHAPTER 12

The Lee County Land Development Code is hereby amended to create a new chapter 12 pertaining to Resource Extraction activity in Lee County. The additional text is set forth below.

CHAPTER 12

RESOURCE EXTRACTION

ARTICLE I. IN GENERAL

ARTICLE II. MINING AND EXCAVATION

Sec. 12-101. Legislative findings.

(a) Mining operations by their nature are not compatible with most other uses. However, the Lee Plan acknowledges that mining is a valuable resource.

(b) It is important to seek opportunities to site and permit mines in a manner that fosters compatibility between the environment and surrounding communities and minimizes, to the extent possible, the creation of additional impacts on the environment and surrounding community.

(c) Construction aggregate materials are a finite natural resource.

(d) A reliable and predictable supply of construction aggregate materials is necessary to sustain public and private construction in Lee County without interruption.

(e) The process of properly siting and permitting a mine in a time efficient and effective manner can be accomplished through the coordination and cooperation of all involved regulatory entities, including but not limited to, Lee County, Florida Department of Transportation, South Florida Water Management District, Department of Environmental Protection and the Army Corps of Engineers in order to successfully address all permitting and compatibility issues.

Sec. 12-102. Purpose and intent.

(a) This chapter establishes the general requirements for mining activities and sets forth the procedures, requirements and regulations pertaining to an application for approval and subsequent operation of mining activity in Lee County.

(b) This chapter is intended to establish an integrated review and approval process based upon submittal of detailed information to be used by multiple reviewing entities to achieve siting and permitting of a mine in a comprehensive and time effective manner.

(c) The review process set forth in this chapter seeks to eliminate redundancies with respect to submittal and review within Lee County and coordination of approvals between local, state and federal permitting entities.

Sec. 12-103. Applicability.

This Article is applicable to resource extraction activity, specifically mining, within the unincorporated areas of Lee County.

Sec. 12-104. Exemptions.

(a) Excavation activity that may be permitted and approved under the provisions set forth in section 10-329 are exempt from compliance with this chapter.

(b) Approval for excavation activity issued prior to September 1, 2008 does not exempt the mining activity from compliance with the provisions of this article if the issuance of a renewal permit is required to continue the mining operation.

Sec. 12-105. Definitions.

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Asphalt batch plant means a facility used for the manufacture of asphalt paving products by combining crushed limestone, sand or screenings with a heated petroleum binder in a kiln.

Concrete batch plant or ready mixed concrete plant means a facility used for the delivery of limestone aggregate, sand or screenings, cement and water into mixer trucks as part of a concrete manufacturing process. The facility may contain a system of conveyor belts, chutes, storage silos, stockpile areas, water and air systems, and weight scale and meters for the accurate dispensing of raw materials to produce the desired strength and type of concrete.

Construction materials mining means the extraction of limestone and sand suitable for production of construction aggregates, sand, cement and road base materials for shipment off-site by any person or company primarily engaged in the commercial mining of any such natural resources.

Diligent pursuit means the attentive, persistent and consistent effort to secure or attain a particular goal. In the context of this chapter, the goal will likely be a permit approval.

Director means the Director of the Department of Community Development or designee.

Excavation means the stripping, grading or removal by any process of natural minerals or deposits, including but not limited to peat, sand, rock, shell, soil, fill dirt or other extractive materials, from their natural state and location.

Excavation depth means the vertical distance measured from the lowest existing natural grade along the bank of the proposed excavation to the deepest point of the proposed excavation.

Existing mine means a mine as defined in section 12-121.

Extraction or resource extraction means the removal of resources from their location so as to make them suitable for commercial, industrial or construction use; but does not include excavation solely in aid of on-site farming or on-site construction, nor the process of searching, prospecting, exploring or investigating for resources by drilling.

Fill dirt means material suitable for use to improve land by distributing over the surface of the land to raise the ground level to above base flood elevation. Fill dirt is not deemed suitable for production of construction aggregates, sand, cement or road base materials.

General mining permit means the approval, granted as a special exception or planned development by the Board of County Commissioners or the hearing examiner prior to September 1, 2008, indicating that a proposed mining development or a specific phase of a mining development received all necessary zoning approvals.

Limestone means any extracted material composed principally of calcium or magnesium carbonate.

Mine or mining means excavation for the primary purpose of removing the extracted material for use off-site. This does not include the removal of surplus materials defined in chapter 10.

Mine development order (MDO) means the permit issued subsequent to zoning approval that allows the applicant to commence improvements to the mine site as a precursor to commencement of resource extraction and off-site hauling of extracted materials and active operation of accessory mine facilities (e.g. batch plants). The MDO is similar to a full development order approval under chapter 10 and is reviewed in accordance with the provisions set forth in section 10-108, 10-108.1, 10-109 and 10-110. A MDO is also required for certain existing mines meeting the requirements of 12-121(a) and (b).

Mine excavation planned development (MEPD) means the approval granted by the Board of County Commissioners entitling the applicant to pursue a mine site construction permit and mine operation permit.

Mine operation permit (MOP) means the approval issued by the Director after staff review evidencing compliance with all conditions of the mine excavation planned development resolution (or underlying zoning approval if an existing mine) and site construction permit. Issuance of the mine operation permit allows extracted resource materials to be hauled off-site and commencement or operation of mining accessory uses and activities. A valid MOP is necessary to conduct mining activity starting with the initial excavation and continuing through completion of reclamation.

Mine Site Plan means the set of maps and engineering plans complying with the provision of section 12-111.

Mining accessory use means uses normally ancillary and subordinate to a mining excavation development and shown on the approved Mine Site Plan. Mining accessory uses include but are not limited to:

1. Administrative offices, including scale house and scales
2. Vehicle repair and service limited solely to the maintenance and repair of vehicles and equipment for the mining operations
3. Entrance gate and gate house, in accordance with Chapter 34
4. Excavation, water retention in accordance with Chapter 10
5. Self-service fuel pumps, further limited by Note 24 in section 34-934 to two pumps for the on-site business to provide fuel for the mining operation's own fleet of vehicles and trucks
6. Stone, Clay, Glass, and Concrete Products manufacturing, limited to asphalt plant, concrete batch plant and concrete block and brick plant
7. Storage, open (as defined in section 34-2)
8. Signs, in accordance with Chapter 30

Natural background or predisturbed means the condition of waters before man induced alterations based upon the best scientific information available.

Overburden means the soil and rock removed to gain access to the resource in the process of extraction.

Processing means the washing, sizing, storage, drying and grinding of excavated material and reasonably related activities, but not the manufacturing of material into another product.

Reclamation means the rehabilitation of land where resource extraction/mining activity has occurred to establish soil stability, habitat enhancement, revegetation, water resources and safe conditions appropriate to the area.

Rock crushing and screening plant means a facility comprised of systems used for the automated conveying, crushing, segregation and blending of crushed rock in order to manufacture the basic materials used in construction such as concrete, concrete block, cement, asphalt, road base and many other rock products. A rock crushing and screening plant facility includes portable crushing facilities.

Substantial change means a significant alteration to a mine excavation approval that will require consideration and approval through the public hearing process. Requests related to expansion/contraction of the project boundary, expansion of the mine excavation (mine footprint) area, increase in the depth of the mine, reduction of conservation, preserve

or wildlife habitat areas, decrease in the reclamation standards, extension of the mine duration, addition/expansion of uses permitted on the site, elimination or amendment of a zoning condition, request for dewatering or a variance from the provisions of this chapter will be deemed a substantial change.

Water budget means an analysis and accounting of inflow, outflows and net storage of water over time within a given region. Water budgets include contributions from atmospheric, surface and groundwater systems. This generally includes contributions from precipitation, evaporation, evapotranspiration, overland flow and groundwater recharge and subsurface flow.

Sec. 12-106. Approvals required.

It is unlawful for any person to commence mining activities within the unincorporated areas of the county, or for an owner to allow the conduct of mining activities on property without first obtaining a MEPD approval and MDO, with the sole exception of mines meeting the criteria set forth in section 12-121(a) and (b). It is unlawful for any person to haul excavated materials off-site without a valid MOP. All permits and approvals required by this chapter must be posted at the mine site. Any violation of the MEPD approval, MDO or MOP, including any terms or conditions applicable to those approvals, may result in enforcement proceedings as set forth in section 12-123.

Existing mines may lawfully continue operation in accord with the provisions set forth in section 12-121.

Sec. 12-107. Lee Plan consistency.

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.

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

(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 preapplication meeting.* The applicant must attend a preapplication 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) *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.

(e) *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.

(f) *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.

(g) *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.

(h) *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 if 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.

Sec. 12-109. Issuance of Approvals; Duration of approvals

(a) *Mine excavation planned development (MEPD) approval.*

- (1) Initial approval of a MEPD must be granted by the Board of County Commissioners through the public hearing process, as outlined in sections 34-83 and 34-145(d) and modified by this chapter. Amendments to the MEPD resolution that constitute a substantial change, as defined in section 12-105, must be approved through the public hearing process.
- (2) A MEPD approval automatically vacates ten years from the date of the Board approval unless excavation is occurring on the site in accord with a valid MOP issued under this chapter or an extension is granted in accord with section 12-109(d).

Once vacated a MEPD resolution may not be reinstated or extended and all mine activity on the site must cease. A new MEPD application approval will be required to obtain the right to conduct mining activities on the subject property.

- (3) Amendment of the site plan attached to the MEPD resolution may be achieved administratively with respect to nonsubstantial changes as part of and during the MDO process in accord with section 12-108(e).
- (4) The MEPD resolution is valid for a period of ten years from the date of the Board hearing approving the mine project. If the applicant obtains both MDO and MOP approvals in accord with this chapter, the effectiveness of the MEPD resolution is extended in accord with the time frames applicable to these subsequent approvals.

(b) *Mine development order (MDO).*

- (1) A MDO approval is issued by the Development Services Director.
- (2) MDO approval is valid for 6 years from the date of issuance in accord with section 10-115.
- (3) The applicant may apply for a new MDO approval, or an extension, only if a valid MEPD approval is in place. Approval of a MDO extension does not extend the life of an otherwise vacated MEPD approval. Likewise submittal of an application for a MDO does not act to extend the life of a MEPD approval pending issuance of the MDO approval.
- (4) MDO applications will be processed in accord with the procedures set forth in sections 10-108 through 10-112, 10-114 and 10-116 based upon the criteria set forth in this article. Any conflicts between the provisions of chapters 10 and 12 will be resolved in favor of chapter 12.

- (5) Amendments to MDO approvals will be processed in accord with section 10-118.
- (c) *Mine operation permit (MOP).*
 - (1) Approved by the Development Services Director.
 - (2) Approval is valid for ten years from the date the permit is issued. Renewal may be granted only if the mining activity is in compliance with all conditions of the MOP.
 - (3) Upon expiration, the mine operator/property owner will be required to obtain a new MOP, including a MEPD approval in the event the underlying zoning approval is no longer valid.
- (d) *Extensions.*
 - (1) *MEPD.*
 - a. *Administrative extension.* One, one-year extension may be granted administratively by the Director if the applicant/mine operator is diligently pursuing approval of a MDO permit.
 - b. *Board extension.* An additional extension may be granted by the Board of County Commissioners if:
 - 1. The extension does not extend the life of the MEPD approval more than 15 years from the date the Board approved the original MEPD.
 - 2. The applicant/mine operator files a written request for extension at least 120 days prior to expiration of the MEPD approval (or administrative extension approval, if granted) on the form established by the County, accompanied by the documents and evidence set forth in section 12-109(d)(1)c.
 - c. As a basis for review and action on a request for MEPD extension by the Board, the applicant/mine operator must include the following:
 - 1. A copy of the approved MEPD resolution.
 - 2. A current TIS meeting the requirements of section 12-116.

3. A copy of the MDO application and latest correspondence regarding pursuit of approval.
 4. A detailed narrative explaining why the MDO approval has not been issued and a chronology setting forth the elements related to the applicant's diligent pursuit of the MDO approval.
 5. A written statement describing the MEPD's current status with respect to the criteria set forth in 12-109(d)(1)d.
- d. The Board of County Commissioners will consider the request for extension during a public hearing scheduled on a Board Zoning Administrative agenda. County staff will provide a recommendation with respect to the request, accompanied by the application and supporting documents submitted by the applicant/mine operator. The staff recommendation will address the following criteria:
1. Whether the MEPD resolution is consistent with the current Lee Plan.
 2. Whether the MEPD resolution and related mining plan is compatible with the existing and approved development in the surrounding area.
 3. Whether the mining plan will, by itself or in conjunction with existing and approved development, place an unreasonable burden on essential public facilities.
 4. Whether the reasons the MDO approval has not been issued are reasonably beyond the control of the applicant/mine operator and the applicant/mine operator is diligently pursuing approval of the required MDO.
- e. The decision of the Board to approve or deny the extension request is discretionary.
- (2) *MDO*. An approved MDO may be extended administratively by the Director, in accord with the procedure set forth in section 10-123 as modified below, if:
- a. The mine operator files a written request at least 60 days prior to expiration of the MDO on the form established by the County.

- b. The mine operator provides proof of diligent pursuit of the MOP approval (i.e. certificate of compliance for the MDO).
- c. The extension is not for greater than a one year period and will not extend beyond the expiration date of the MEPD approval.
- d. The underlying MEPD approval is valid.

Sec. 12-110. Application Submittals.

(a) *Mine excavation planned development approval.* Application for a MEPD approval must be made on a form prepared by Lee County and be submitted with the appropriate fee. Application sufficiency and resubmittal timing will be in accord with section 34-373(d). The application must address the following:

- (1) *Legal description and sketch of the subject property.* The legal description and accompanying sketch must comply with the requirements set forth in section 34-202(a)(1).
- (2) *Boundary survey.* The survey must comply with the provisions of section 34-202(a)(2). It must also be based upon an opinion of title or certificate of title meeting the requirements set forth in Lee County Administrative Code 13-19.
- (3) *Title certification.* A document meeting the requirements of section 10-154(2) must be provided with the survey.
- (4) *Owner, applicant and developer information.* This information must be consistent with the provisions set forth in section 10-153(2).
- (5) *Surrounding property owners list and map.* These documents must comply with the provisions set forth in sections 34-202(a)(6) and (7).
- (6) *Aerial photograph.* The Aerial must meet the requirements of section 10-154(9).
- (7) *Traffic Impact Statement (TIS).* A TIS must be submitted meeting the criteria set forth in section 12-116(a).
- (8) *Traffic mitigation plan.* A traffic mitigation plan addressing the impacts recognized by the TIS and the criteria set forth in sections 12-116(b), (c) and (d).

- (9) *Structure affidavit.* This affidavit must meet the requirements of section 34-202(b)(3).
- (10) *Existing agricultural use affidavit.* This affidavit must meet the requirements set forth in section 34-202(b)(7).
- (11) *Narrative describing the proposed mine operation.* A description of the excavation operation, including a description of methods to be employed in removing extracted materials from the ground and from the premises. If blasting is to be used, the type of blasting material as well as the frequency and hours of blasting contemplated. See section 34-202(b)(6) for other required information.
- (12) *Proposed accessory mine uses.* A description of the proposed accessory mine uses such as rock crushing, concrete/asphalt batch plants, cement plant etc. This description also must identify where the activities will occur and the type of building/structure that will encompass the activity.
- (13) *Physical plant facilities.* The specific location and description of all physical plant facilities or other facilities for the operation, including but not limited to, proposed fueling, vehicle servicing and truck and tire washing facilities.
- (14) *Hours of operation.*
 - a. The proposed hours for office operations and business transactions and the hours that trucks will enter and leave the site with excavated materials. No blasting, excavation or trucking operations may be conducted on Sunday or Federal holidays.
 - b. The proposed hours for excavation operations (i.e. dragline operations and blasting activities) and rock crushing operations.
- (15) *Mining plan.*

The mining plan is based upon the proposed area to be excavated, also known as the "mine footprint". It is a graphic depiction of the mine footprint in relation to the boundary of the mine site and other site related activities. The mining plan also includes an estimate of the life of the mine in years based upon the yardage or material to be removed while the mine is in operation and the length of time necessary to process the material and haul it off-site. The mine plan must include a realistic estimate with respect to when the mine excavation activity will be complete and reclamation will be commenced.

If a proposed mine project is comprised of areas that will be mined separately, though located within the boundary of the mine project, then a "separate" mining plan will be required for each proposed mine cell or area. As an example, if there is a natural boundary between two excavation footprints/mine lakes created by a wetland or conservation area, each of these areas must be specifically and separately addressed in the mining plan.

- (16) *Hazardous materials emergency plan.* A hazardous materials management plan must be submitted to address potential ground and surface water contamination that may result from the proposed mining operation. The plan must comply with the requirements in chapter 14 for storage, handling and disposal of all regulated materials and waste.
- (17) *Historical and archeological data.* Submittal information must indicate whether the property:
- a. is located within a Level 1 or 2 zone of archeological sensitivity pursuant to the survey titled "An Archeological Site Inventory and Zone Management Plan for Lee County, Florida", or
 - b. contains an archeological site that is listed on the Florida Master Site File.

If the property is located in an archeologically sensitive zone, a certificate to dig must be included with 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 included.

- (18) *Test boring data.* Data from test borings conducted on each proposed excavation site at intervals determined by the Division of Natural Resources during the pre-application meeting. Soil borings taken within the footprint of each proposed mine cell or area must be provided to the Division of Natural Resources. Information submitted must include:
- a. Soil borings must extend to either the bottom of the confining zone of the proposed mine aquifer or ten feet deeper than the proposed depth of the mine cell or area, whichever is greater. A minimum of one boring must be taken within the footprint of each proposed mine cell or area within the boundary of the mine project. Additional borings must occur at every one-foot of elevation change within each mine cell or area. Locations of the test borings based upon site specific

conditions. The depth of borings must exceed a minimum of ten feet beyond the proposed total depth of excavation. If wetlands are existing on-site a minimum of two borings per wetland are required, with one located at the edge of the wetland and the second a distance of 25 feet away;

- b. Nature and depth of overburden;
- c. Likely yield of extractive material;
- d. Complete chemical characteristics of water in each water-bearing strata to be penetrated;
- e. Groundwater levels; and
- f. A map contouring the first confining layer below the depth of excavation and thickness of the layer within the project site. Thickness and contouring of all intermediate confining layers between the land surface and depth of excavation must be depicted.

After evaluation by the Division of Natural Resources, the test borings must be plugged from bottom to top with cement as required by the Lee County well code (Ord. 06-09).

- (19) *Federal and State Permits/applications.* A complete copy of the permit applications and correspondence meeting the requirements set forth in section 12-114.
- (20) *Fire protection plan.* Where the development falls outside of a fire district, the applicant must submit proof, in writing, that it has provided for fire protection as approved by the County fire official.
- (21) *Environmental assessment report.* The report must be a thorough evaluation of natural resources with a particular emphasis on the protection or improvement of surface and groundwater quantity and quality. An environmental assessment report must be submitted that includes a scientifically based evaluation of the following:
 - a. Existing and historic Florida Land Use and Cover and Classification System mapping (FLUCCS Levels 4 and 3, respectively) hydric soils map, wetland boundary delineation and general locations of existing native trees on recent aerial photos.

- b. Preservation and restoration of natural resources, including but not limited to wetlands, natural existing and historic flowway corridors, sloughs, creeks, ponds and lakes, and native plant communities and native trees.
 - c. A protected species survey meeting the requirements set forth in section 10-471 *et seq.*
 - d. Submittals meeting the requirements applicable to groundwater, surface water, water quality and water quantity as set forth in section 12-117.
 - e. Environmental and water resource impacts due to stock piling of material.
 - f. Fire and safety.
 - g. Noise, odor, visual impacts.
 - h. Air quality emissions.
 - i. Methods for sewage and solid waste disposal.
 - j. Stormwater Pollution Plan in accord with section 14-477.
 - k. State verified wetland jurisdictional lines.
- (22) *Reclamation plan.* A proposed reclamation plan meeting the requirements set forth in section 12-119 must be submitted.
- (23) *Wildlife habitat.* A submittal meeting the wildlife habitat design standards set forth in section 12-113(p).
- (24) *Post mining plan/Future uses.* A proposed plan or statement regarding the applicant's proposed use of the property subsequent to the conclusion of the mine operation and the completion of all reclamation. This plan must provide detail regarding the criteria and issues set forth in section 12-122.
- (25) *Site maps and engineering plans.* A site map and engineering plan set in accord with section 12-111.
- (26) *Landscape Plans.* A landscape plan prepared by a Landscape Architect registered in the State of Florida meeting the requirements set forth in sections 12-113 and 12-119.

(b) *Mine development order (MDO) approval.* An application for a MDO must be submitted on the form prepared by the County and be accompanied by the appropriate fee. The application must include the following:

- (1) Copy of the approved and fully executed MEPD resolution, including a copy of all documents set forth in 12-110(a).
- (2) Copy of the approved set of engineering plans and studies prepared in accordance with section 12-111 demonstrating compliance with the site design requirements identified in section 12-113 and the MEPD resolution.
- (3) Copies of all required state and federal permit applications, including drawings, and related correspondence.
- (4) Copy of state permit for surface water management (e.g. SFWMD or FDEP).
- (5) Copy of the stormwater pollution prevention plan notice of intent filed with the Department of Environmental Protection.
- (6) Copy of Army Corps of Engineers verified wetland jurisdictional lines.
- (7) Copies of recorded conservation easements required by the conditions of the MEPD or MDO approval.
- (8) Copies of all State and Federal permits approving the mine activity issued subsequent to MEPD approval.
- (9) Site landscaping and engineering plans reflecting any changes to the plans as approved under the MEPD.

(c) *Mine operation permit approval.* MOP approval is granted when the final Certificate of Compliance for the underlying MDO is issued by the County. The request for a MOP (or final MDO Certificate of Compliance) must be made on the form prescribed by the County. Additionally, the following items must be provided:

- (1) Proof as to County acceptance of the surety documents required as a condition of County approval, including, but not limited to, off-site roadway maintenance and reclamation.
- (2) Documents required by the MEPD or MDO to be approved prior to the issuance of the MOP.
- (3) Engineer letter of substantial compliance, along with evidence of County inspection and approval as to:

- a. Site landscaping.
- b. Infrastructure installation, including roads, utilities.
- c. Site depth, if applicable.
- d. Other site specific items identified in the MDO.

(d) *Renewal of mine operation permit.* The submittal requirements for renewal of a MOP are set forth in sections 12-115 and 12-121.

(e) *Waiver from submittal requirements.* Upon written request, the Director may modify the submittal requirements where it can be clearly demonstrated that the submission will have no bearing on the review or processing of the application. The request and the Director's written response must accompany the application submitted and will become part of the permanent file.

Sec. 12-111. Mine site plan; site map and engineering plan set.

A series of maps and engineering plans, including drawings prepared and sealed by an appropriate registered professional in the State of Florida (e.g. engineer, architect, surveyor) must be provided to obtain MDO approval in accord with the provisions of this section. This map and plan series, known as the Mine Site Plan, must meet and include the following minimum criteria:

- (1) Be drawn at an appropriate scale, to be determined at the pre-application meeting based upon the size of the property. The scale must be sufficient to allow all information to be clearly and legibly depicted and described. A consistent scale between the maps and plans is preferred and recommended to assist in review of the information provided and to minimize the need to request additional submittals.
- (2) Identify the date each document is prepared and any subsequent revision dates.
- (3) Include a north directional arrow, pointing to the top of the page or to the left side of the page.
- (4) Include a certification statement specifically stating: "I, the undersigned, hereby certify that this map is correct, and shows the information required by the requirements of the Land Development Code to obtain a MEPD, MDO or MOP."
- (5) *Mining plan.* Consistent with the mining plan criteria set forth in section 12-110(a)(15), the extent of the area to be mined (i.e. mine footprint) must be depicted. This includes all proposed mine cells or areas. Other mine uses and facilities must also be depicted.

- (6) The names and location of existing:
- a. Streams, creeks, sloughs, natural flowways, floodways, wetlands, water bodies within the determined watershed area.
 - b. Indigenous vegetation areas.
 - c. Wildlife habitat areas.
 - d. Easements within the property boundary (as identified on the required title opinion) including publicly and privately owned Conservation easements and the means by which access to the easements is obtained.
 - e. Percolation ponds and drainfields within the determined watershed area.
 - f. Public and private roads; and vehicle access routes to nearest county-maintained road.
 - g. Railroad.
 - h. Utility lines and easements.
 - i. Existing buildings.
 - j. Cemeteries within 100 feet of the property boundary.
 - k. Test boring locations.
 - l. Public wellfields.
 - m. Public and permitted private wells with GPS or surveyed locations of wells along with wellhead elevations within a one mile radius around the mine project boundary.
- (7) The specific locations and descriptions of proposed:
- a. Conservation and preservation areas, along with the access to these areas.
 - b. Buffers.

- c. Indigenous areas to remain and indigenous replanting areas.
 - d. Littoral zone created wetland areas.
 - e. Physical plant facilities or other facilities supporting the operation, including but not limited to, scale houses, administrative offices, proposed fueling, vehicle servicing, and truck and tire washing facilities.
 - f. Accessory mine operation facilities such as, but not limited to, rock crushing operations, concrete and asphalt batch plants, cement plants etc.
 - g. Stockpile areas, including a typical cross-section of the area.
- (8) Profile plans showing:
- a. The proposed depth of excavation and slope of banks during excavation operations and after reclamation.
 - b. The proposed littoral zone created wetland areas.
 - c. Buffer areas.
 - d. Any other areas that need a cross-section to demonstrate compliance with the code requirements.
- (9) *Engineering plans.* Engineering plans must be provided with a level of detail that would otherwise be found sufficient to allow issuance of a development order under chapter 10 for the proposed mine activity, including but not limited to the following items:
- a. Traffic related issues:
 - 1. Vehicular ingress and egress to the project from the public right-of-way, including site related improvements required under section 12-116.
 - 2. On-site access roads and truck staging areas; services delivery areas and off-street parking areas.
 - 3. Traffic count stations required under section 12-116.
 - b. Water related issues:

1. Monitoring wells required under section 12-117.
 2. If dewatering is proposed, the details of the proposed activity must be provided in accord with the provisions set forth in section 12-117.
- c. Environmental issues:
1. *Drainage and stormwater management plan.* A drawing showing the location of all curbs and gutters, inlets, culverts, swales, ditches, water control structures, water retention or detention areas, and other drainage or water management structures or facilities must be submitted. Sufficient elevations must be shown to adequately depict the direction of flow of stormwater runoff from all portions of the site. A copy of all drawings and calculations submitted to the South Florida Water Management District must also be submitted. The plan must identify the U.S. Department of Agriculture Soil Conservation Service soils classifications of the site to determine the feasibility of the proposed pollution control and drainage plans.
 2. Reclamation plan meeting the requirements of section 12-119.
- (10) *Proposed buildings or proposed structures.* The building envelope, including the perimeter of the area within which the building will be built, the height of all buildings and structures, the maximum gross floor area, and a depiction of no less than the minimum number of required parking spaces, including handicapped spaces.
- (11) *Utilities.* A statement indicating the proposed method intended to provide water, sewer, electricity, telephone, refuse collection and street lighting, including but not limited to:
- a. The names and address of all utilities, governmental or private, intended to supply the service.
 - b. The names and addresses of the owners of all existing public water and sewage systems within one-quarter mile of the proposed development.
 - c. A plan showing the location and size of all water mains and services, fire hydrants, sewer mains and services, treatment plants and pumping stations, together with plan and profile drawings showing the depth of utility lines and points where utility lines cross one another or

cross storm drain or water management facilities. The location of services must be shown.

- (12) *Exterior lighting plan, photometrics and calculations.* An exterior lighting plan and photometric information must be submitted. The plan and photometric information must be provided in full compliance with section 34-625 and demonstrate compliance with all standards and criteria specified therein.
- (13) *Calculations and other pertinent materials.* The Development Services Director may also require submission of calculations in support of all proposed drawings, plans and specifications. Calculations, data and reports to substantiate engineering designs, soil condition, flood hazards, compensation of floodplain storage (see section 10-253), wet season water table, etc., may be required.

Sec. 12-112. Hearing Process.

The hearing process for approval of MEPD applications is as set forth in sections 34-83 and 34-145. This includes the requirements applicable to notice for hearings and criteria for review. In addition to the findings required to support a rezoning, the Hearing Examiner and Board must also consider and find that the applicant has proven entitlement to MEPD rezoning by demonstrating:

- (1) The mining activity will not create or cause adverse effects with respect to dust, noise, lighting and odor on existing agricultural, residential, conservation activities, or other nearby land uses.
- (2) The applicant has given special consideration to protection of surrounding private and publicly owned conservation and preservation lands.
- (3) Approval of the request will maintain the identified wet and dry season water level elevations and hydro periods necessary to restore and sustain water resources and adjacent wetland hydrology on and off-site during and upon completion of the mining operations.
- (4) The site is designed to avoid adverse effects to existing agricultural, residential or conservation activities in the surrounding area.
- (5) The site is designed to avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources.
- (6) The site is designed to mimic or restore the natural system predisturbed water budget to the maximum extent practicable.

- (7) Approval of the request will serve to preserve, restore and enhance natural flowways deemed important for local or regional water resource management.
- (8) Approval of the request preserves indigenous areas that are occupied wildlife habitat to the maximum extent possible.
- (9) Approval provides interconnection to off-site preserve areas and conservation lands via indigenous preservation areas, flowway preservation or restoration, and planted buffer areas.
- (10) Compliance with the traffic mitigation standards set forth in section 12-116.
- (11) Compliance with the reclamation standards set forth in section 12-119.

Sec. 12-113. Site Design Requirements.

(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.
 - (2) Avoid adverse effects to existing agricultural, residential or conservation activities in the surrounding area.
 - (3) Avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources.
 - (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. 150 feet from an adjacent residential property line.

In all cases, the most restrictive setback will apply.

- (2) A 500' 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% 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' on center per acre and native shrubs must be installed at a minimum of 50' on center per acre. 50 percent of the native trees must be 3' tall and the balance of the trees may be 1' tall. Native shrubs must be installed at 1 gallon container size. No more than 25% of one species can be utilized. Indigenous replanting areas must have 80% 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' width, maintained at natural grade;

2. Every 100' of the right-of-way buffer must consist of:

Ten 10' trees with 2" caliper and 4' spread

Ten 5' trees with 1" caliper and 2' spread

100 native shrubs 24" in height

3. 50% of the required trees must be native pines; 30% must be large native canopy trees (e.g. live oaks); and 20% native palms or appropriate native wetland vegetation.

b. Residential:

1. Minimum 150' width, maintained at natural grade;

2. Every 100' of the residential buffer must consist of:

Fifteen 10' trees with 2" caliper and 4' spread

Ten 5' trees with 1" caliper and 2' spread

150 native shrubs 24" in height

3. 50% of the required trees must be native pines; 30% must be large native canopy trees (e.g. live oaks); and 20% native palms or appropriate native wetland vegetation.

c. Agricultural:

Minimum 50' width, maintained at natural grade.

d. Conservation Lands:

1. Minimum 100' width, maintained at natural grade;
2. Every 100' of the conservation lands buffer must consist of:

Ten 10' trees with 2" caliper and 4' spread
Ten 5' trees with 1" caliper and 2' spread
100 native shrubs 24" 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 8 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' 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' wide area must be planted with a continuous native shrub hedge (33 shrubs per 100 linear feet; minimum 3-gallon container size) along the perimeter of the habitat area and a minimum of 20 native trees per 100 linear foot clustered (minimum 10 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.

Sec. 12-114. State and federal permits.

A complete copy of the permit applications submitted to South Florida Water Management District, Department of Environmental Protection, Florida Fish and Wildlife Commission, and Army Corps of Engineers necessary to support or achieve approval of the mine activity must be included in the MEPD application. Copies of correspondence to and from the state and federal agencies must also be submitted to the County contemporaneously so that the County will be fully apprised of the activity with respect to these permits.

A copy of the Environmental Resource Permit (ERP) is required prior to issuance of the MDO.

Copies of required state and federal permits, other than the ERP, must be submitted to the County prior to issuance of a county permit covering areas required to obtain state or federal approval to allow mining activity.

Lee County may impose conditions more restrictive than state and federal permit requirements if deemed necessary to afford consistency with the Lee Plan or compatibility with surrounding uses.

Sec. 12-115. Mine operation permit renewal requirements.

- (a) *Renewal of a Mine operation permit.*
 - (1) Approved by the Development Services Director.
 - (2) Issued based upon a demonstration of compliance with all conditions and regulations imposed by the Board for the mine operation. As a result of the renewal process, mine operations will be required to update a number of previously submitted documents, such as but not limited to, mining plans, reclamation plans, monitoring requirements and surety documents, as a basis for approval.
 - (3) A renewed MOP is valid for a period of ten years from the date the approval is issued. Subsequent renewal requests must be submitted at least 90 days prior to expiration of the renewed MOP.
- (b) *Submittal requirements for renewal.*
 - (1) *Cumulative monitoring reports.* The five year cumulative monitoring reports, meeting the criteria set forth in section 12-118(b), outlining the trends revealed by the quarterly and annual reports submitted over the previous ten year period, beginning from the date the initial or renewal MOP was issued.
 - (2) Copies of the annual monitoring reports and underlying information as required by the MEPD resolution and section 12-118.
 - (3) Updated reclamation schedule.
 - (4) Updated protected species survey.
 - (5) Status of exotic removal.
 - (6) Reclamation plan meeting the standards set forth in section 12-119.
 - (7) Updated TIS based upon the requirements set forth in section 12-116(a) addressing adequacy of turn lanes and other off-site traffic improvements.

- (8) Analysis demonstrating compliance with the conditions set forth in the MEPD resolution and related approvals.
- (9) Updated cost estimates and surety documents required by the MEPD resolution and this article.
- (10) Details of noncompliance events, data trends, and methods of resolving such events.

(c) The cumulative monitoring reports submitted every five years and with the MOP renewal request will be reviewed to determine whether any adverse impacts are precipitated by the mine activity. Adjustments to the mine site plan intended to eliminate or ameliorate the impacts to the greatest extent possible will be required as a condition of the MOP renewal approval or in response to adverse conditions evidenced by an interim five year cumulative report.

(d) *Existing Mines approved before September 1, 2008.* The requirements to obtain a MOP renewal for existing mines approved before September 1, 2008 are set forth in section 12-121.

Sec. 12-116. Transportation issues.

(a) *Traffic Impact Statement (TIS).* A traffic impact statement is required for all mine related applications and approvals, including MEPDs, MOPs and MOP renewals.

- (1) Prior to preparing the TIS, a meeting with County staff is required to discuss the procedure and study assumptions, including but not limited to, the scope and limits of the TIS, the date requirements, traffic projections (including the traffic projections from permitted mines on the affected road corridor not yet in operation), traffic growth factors, the basis of trip distribution assumptions, the truck factors to be used and the analysis software.
- (2) The TIS must be prepared using the mine's peak traffic operating hours, the AM and PM, and the two highest on-street peak hours to establish which hours have the highest directional traffic impact on the adjacent road system and adjacent signalized intersections. Full analysis of two or more separate peak hours may be required as determined by the Department of Transportation Director through conducting a review of the traffic data. The nearest signalized intersections in each direction or those intersections within one mile of the mine's entrance/exit onto the road system, whichever is greater must be analyzed using approved traffic operations analysis methods and procedures.
- (3) The TIS must address, at minimum, the following criteria.

- a. Projected yearly volume and the total amount of excavated material to be removed from the site.
- b. Projected number of peak hour and annual average daily truck trips.
- c. Ownership, condition and maintenance plans for access routes from the actual excavation to the nearest county-maintained roads.
- d. Projected distribution of truck trips on the county and state road network.

(b) *Site related improvements.*

- (1) *Turn lanes.* To protect public safety and welfare, left turn and right turn deceleration and storage lanes must be installed at the mine entrance on all collector and arterial roads, whether public or private. Acceleration lanes are required unless the data and analysis clearly demonstrate that the turn lane is not warranted and will not be necessary to protect public safety and welfare.

A full turn lane and an acceleration lane analysis must be prepared, using truck factors from the latest USDOT study measuring loaded width to horsepower ratio. The appropriate truck factors must be used to establish the length of deceleration and acceleration lanes. The storage lane length must be based upon the truck length plus the applicable headway distance for trucks. Turn lane pavement design must be determined in accord with the FDOT Flexible Pavement Design Manual (latest edition).

- (2) *Permanent Count stations.* The mine operator will be required to construct paved channelized access from a minimum of 200 feet inside the mine property boundary up to the public road in order to provide for a properly improved surface to safely accommodate all entering and existing traffic. No alternative unpaved access will be permitted.

The mine operator must install a permanent count station to monitor daily vehicular trips. The mine operator must also provide the County with a warranty for repairs, major maintenance and replacement of the count station facilities due to frequent failure, age, vandalism, accident, incidents and acts of God. The warranty is intended to provide assurance that the County will obtain the benefit of a continuous fully operational permanent count station and vehicle classifier in accordance with the County's current specifications for permanent count stations and traffic sensors. The Department of Transportation will monitor the count station and receive count and classification data over a phone line connection provided by the mine. The mine operation must pay the annual operational and maintenance fees

invoiced by Lee County within 30 days of receipt of the invoice. The fees charged will be established in the Lee County Administrative Code. The annual fee must be sufficient to cover the monthly and annual costs associated with the permanent count station.

- (3) The mining operation must provide paved access connections to the County's road network. Paved access connections must:
 - a. Satisfy the minimum street construction standards (Category "A" standards as set forth in section 10-296) for industrial development specified in this code.
 - b. Be constructed to a minimum depth of 300 feet on the mine property.
- (c) *Transportation impact mitigation.*
 - (1) The mine operator, at no cost to Lee County, will contract for the services of law enforcement personnel to provide continuous (i.e. during the hours trucks are hauling off-site) monitoring of truck traffic entering and exiting the mine. Mine operators may coordinate enforcement efforts with other mines in the area to comply with this requirement. The monitoring performed must include but is not limited to the following:
 - a. Truck operating speeds and general driving behavior.
 - b. Retention of loads within the trucks. (Off-site dumping on public or private rights-of-way external to the mine is prohibited.)
 - c. Proper installation and maintenance of load covers.
 - d. Effectiveness of internal truck and tire wash facilities to provide adequate dust and mud control.
 - e. Proper load covers to prevent "sandblasting" and other effects to vehicular traffic.
 - (2) The mine operator must develop and enforce a truck hauling operation plan that includes, but is not limited to, the following:
 - a. Development of a bilingual driver education manual (Truck Hauling Operation Practice Manual) regarding mine policies and procedures to be provided in written form to each driver.
 - b. Conduct an annual driver education workshop for the purpose of reinforcing the policies and procedures contained in the Truck Hauling Operation Practice Manual defined in section 12-116(c)(2)a.

- c. Develop a set of enforcement policies to include the termination of access to the mine by independent or contract truck operators for violation of the mine's policies and procedures.
 - d. Provide standards regarding truck and tire cleanliness for loaded trucks exiting the mine.
 - e. Provide that loaded trucks use appropriate covers to protect the motoring public from "sandblasting" or other impacts to off-site vehicular traffic or property.
- (3) The mine operator is fully responsible for maintaining, repairing or replacing the access within the limits of the off-site specific improvements (i.e. site-related improvement areas) in accordance with County standards in the event a County inspection finds deterioration, unsafe conditions, or that the improvement is failing or has reached the end of its useful life. The "off-site specific improvements" include, but are not limited to, the pavement surface, the subgrade base and the pavement markings, including the limerock, any black-base and other base and stabilized material within the limits of the site access.
- (4) The County is considering the adoption of a user fee intended to provide funds to repair and maintain roadways and related facilities used and degraded by heavy mining truck traffic. The mine operator will be required to provide certain information to establish the fee amount.
- (d) *Monitoring and inspections.*
- (1) *Annual site access pavement inspections.* The Department of Transportation will conduct an annual inspection of the site access pavement areas. This inspection will consist of a site visit to assess the general condition of the site access and turn lanes, and photographing of the pavement condition. The costs associated with this inspection will be the responsibility of the mine. If the Department of Transportation Traffic Engineer determines that immediate correction or pavement repairs are required, notice will be provided to the mine operator regarding the repairs needed. The mine operator must provide a written response to the notice, within five business days after receipt, detailing the repairs to be made and indicate a date certain for their completion. Failure to provide the written response or complete the necessary repairs constitutes a violation of this article and will be subject to the process and sanctions set forth in section 12-123.

The mine operator, as a condition of the MOP approval, may choose to retain an independent engineer to perform and provide a signed and sealed, detailed annual inspection of the site access and turn lanes for annual submittal to Lee County. Upon receipt, the report will be reviewed and

verified by County staff; and, any pavement problems will be brought to the mine operator's attention.

- (2) *Annual turning movement monitoring.* The mine operator must provide the County with manual turning movement counts taken at the mine entrance. The annual turning movement counts must be conducted by an independent traffic consultant that must coordinate directly with and receive direction from Lee County Department of Transportation with regard to scheduling and requirements for the count. The dates and time of manual counts may not be announced by the independent traffic consultant to the mine operator or owner in advance of the count dates. The mine operator may not take any action to reduce traffic or reduce mining operations due to the commencement of the counts. The mine operator may not take action that would reduce truck traffic without prior notification to the County and the independent traffic consultant.

Sec. 12-117. Water quality and quantity issues.

- (a) *Application submittal information and standards.*
 - (1) *Watershed.* Delineation of the watershed basin, as defined in the preapplication meeting or MEPD resolution (if a renewal request), overlaid on the most recent aerial photograph available.

Watershed topography showing one-foot elevation intervals based upon NAVD 1988 datum for all property within the watershed, as defined at a preapplication meeting, based on existing data (e.g. USGS Quad maps; etc.); or, if none exists, data collection may be required.

- (2) *Baseline analysis.* A baseline surface and groundwater analysis designed and conducted to establish baseline data for surface and groundwater monitoring for the mining project area. The analysis must be designed to identify historical pre-development and existing surface and groundwater levels throughout the year, as well as the collection of surface and groundwater quality baseline data. Prior to commencing the baseline study, the proposed methodology must be submitted for review, comment, and approval by the County. The baseline study must be based upon sufficient temporal and spatial site specific data to ensure average or representative surface and groundwater levels are documented prior to application submittal. Data collected during an extreme dry or wet year will not be deemed appropriate representation of average water levels or quality. This analysis must include available data on ground and surface water levels within the watershed basin, as defined in the preapplication meeting, along with a cumulative impact analysis.

- (3) *Historic flows.* Historic (prior to construction of ditches and other drainage structures), existing, and proposed drainage patterns including flowways on and within the vicinity of the site.
- (4) *Existing drainage structures or facilities.* Location and purpose of existing ditches, canals, swales, and other stormwater structures or facilities including infall/outfall elevations, size of the structures and the invert/control elevations.
- (5) *Water budget.* Water budget for the project site based upon sufficient site specific data to ensure accurate evaluations of the proposed project's effect on the water resources. In addition to the existing data from previous permits, studies, and reports, new data must be collected on-site through various means such as piezometers, staff gauges, rainfall gauges, aquifer performance tests, geological investigations and evaporation measurements. These new and existing hydrologic and hydraulic data will be used in the water budget analysis (generally in the form of a model simulation) to determine baseline and appropriate projected normal wet and dry season water level elevations, flow directions within and adjacent to the proposed project area, and subsequently the proposed development impact on the water resources, water management and ecology.
- (6) *Topography contours.* Detailed topography of the site showing one-foot contours based upon NAVD 1988 datum, with sufficient data points to support these contours in accordance with professional land surveying and mapping standards; cross-sections (on an x – y axis) of all state and federal jurisdictional wetlands at sufficient intervals to represent the hydrologic flows and storage within the wetlands, extending a minimum of 200 feet into the adjacent uplands; and cross-sections of all ditches within and immediately adjacent to the site.
- (7) *Water levels.* Current and historic seasonal high water levels based on natural benchmarks and aerial photography for each wetland to include a sufficient number of locations to determine accurate water levels.
- (8) *Public and private wells.* Public and permitted private wells with GPS or surveyed locations of wells along with wellhead elevations within a one mile radius around the mine property boundary.
- (9) *Salt water intrusion.* Potential of introduction or existence of salt water intrusion and any methods to prevent further degradation of surface and groundwaters.
- (10) *Observation wells.* The South Florida Water Management District Water Use permit requirements must be satisfied.

- (11) *Water Use permit (WUP)*. A copy of the SFWMD WUP application is required to obtain MEPD approval. Thereafter, the applicant must provide contemporaneous copies of correspondence regarding the application to the County. A copy of the approved WUP must be submitted to the County prior approval of the MDO.
- (b) *Water Quality Standards*.
- (1) *Monitoring*.
- a. The intent of the monitoring plan in and around the mine is to evaluate native natural background water quality and potential contaminants entering into the natural resources as a result of the mine operation.
 - b. As new mines are excavated, nested monitoring wells must be constructed around the perimeter of the mine to monitor contaminants entering from the mine and then going into the water table and possible deeper aquifers. At minimum, two pair of wells, one pair on the upstream and one on downstream of the groundwater flow, must be installed. The number of wells per mine will be determined by Natural Resources staff based upon the area and perimeter length of the mine site. Mining conducted within the water table aquifer may require a lower level of monitoring.
 - c. Water collected from monitoring wells must be analyzed by an environmental laboratory certified by the State of Florida. Sample collection and analytical protocols must meet be in accord with FAC ch 62-160. Reporting format of the water quality sample monitoring results must be in accordance with the standards established by the Lee County Environmental Laboratory. Surface and groundwater samples must be collected at the same time in order to provide a contemporaneous reading of the water quality.
 - d. Initial monitoring of surface water for mine sites with existing lakes:
 1. The following samples must be collected at the deepest location of the existing lake. Two samples must be collected: one sample at a half meter above the bottom of the lake, and the second sample at mid depth of the lake. A third sample must be collected one half meter below the surface at the lake's outfall or discharge point. If no outfall or discharge point exists, the third sample will be collected at one half meter below the surface at the deepest location. The samples must be tested for the primary and secondary drinking water standards excluding asbestos, dioxin, bacteria, disinfection byproducts and radionuclides. Additional parameters checked on the Table

-1: Water Quality Monitoring Check List, as set forth in Appendix O, must be analyzed and reports must be provided.

2. Additionally, a profile of field parameters (temperature, conductivity, pH and dissolved oxygen) must be collected and recorded in three foot increments at the deepest location of the lake at the time of sample collection in order to establish a water quality profile.

e. Initial monitoring of surface water for mine sites with drainage discharges:

Samples must be collected at the inflow and discharge points on the site. Water quality parameters listed on the Table -1: Water Quality Monitoring Check List must be analyzed and reports must be provided to the County staff.

f. Initial monitoring of groundwater quality:

Water samples collected from all groundwater monitoring wells must be analyzed for chloride, TDS (total dissolved solids), sulfate, pH, conductivity, iron, total hardness, and FL-PRO (Florida Petroleum Residual Organic, an environmental sample analysis method). Groundwater level elevation within monitor wells with reference to NAVD 1988 datum also must be submitted.

g. Subsequent monitoring plans of surface and groundwater quality beyond initial monitoring will be decided by the County staff after reviewing the results of initial monitoring. Initial monitoring not covered by any of the above scenarios will be determined by Natural Resources staff based on site-specific conditions. After commencement of the mining operation, quarterly water quality and stage reports must be submitted to Natural Resources. Groundwater quality standards must not exceed natural background as identified in FAC ch. 62-520.

h. All field activities must be conducted in accordance with FDEP's standard Operating Procedures for Field Activities, FDEP-SOP-00101, February 1, 2004 (or current revision). Analytical tests must be conducted by a Florida Department of Health National Environmental Laboratory Accreditation Conference (DOH NELAC) certified laboratory.

i. Construction activities may not result in an exceedance of natural background water quality defined in this article and as refined by preconstruction data.

(c) *Dewatering.* If dewatering is proposed as part of a mining operation, the following information must be provided:

- (1) Detailed description of the dewatering method and procedure to be used to facilitate the excavation. This description must include a time line phasing, proposed depth and amount of water pumped. The submittal must explain assurances that will be provided, or activities that will be employed, to ensure there will be no adverse impacts to existing on-site or off-site wellfields, nearby properties, or wetlands adjacent to the excavation operation associated with withdrawals from the project.
- (2) Estimated volumes of water to be extracted, impounded or diverted per hour and per day for the duration of the dewatering.
- (3) A map specifically depicting the location of all dewatering pumps and withdrawal points.
- (4) A plan/map showing the disposition of the dewatered effluent, whether on or off the development site. The map must depict the size and location of the proposed holding ponds or trenches as well as the calculations used to determine the size of the proposed holding ponds and trenches. A soils report must be included that documents the ability of the sub-surface soils to percolate the dewatered effluent. If an off-site location is proposed, then the application must include permission from each property owner whose property will be traversed or used to accomplish the dewatering as proposed. This permission/consent must be in writing, signed by the property owner and acknowledged before a notary. Consents signed by an agent of the property owner will not satisfy this requirement.
- (5) Engineering estimates of the monthly water balance for the projected highest, lowest and average rainfall sequence for the operation life of the excavation. This estimate must account for all sources of water input to the water recirculation facilities and processing steps, and all water outputs and losses from the system. The submittal must also include a detailed explanation of the computation methods and assumptions used to derive the estimate.
- (6) Engineering estimates demonstrating that the proposed dewatering will not detrimentally impact adjacent wetlands and water table aquifer must be submitted if the excavation will extend below the normal wet season groundwater elevation.
- (7) A proposed groundwater level monitoring plan that specifies the location of all wells comprising the monitoring well network. The proposed water level monitoring plan and process must be sufficient to document changes to

groundwater levels and groundwater flow directions on and off the subject project site that may result from the proposed dewatering activity.

- (8) A copy of the SFWMD Water Use Permit (WUP) application for dewatering, including support documentation.
- (d) *Monitoring.*
 - (1) All water quality data must be submitted in electronic form, spreadsheet format, so that it may be incorporated by Lee County into its data for developing local or regional water quality profiles and trends.
 - (2) If at any time the established baseline constituent concentrations are exceeded at any level, the mine operator must immediately notify the Natural Resources Director.
 - (3) *Water level monitoring.*
 - a. *Groundwater wells.* A pair of well consisting of one well constructed to the bottom of the unconsolidated formation, and a second well constructed to the bottom of the consolidated formation or top of confining unit that supercedes the aquifer that is being mined. The applicant must construct a pair of wells for every 2500 feet of mine bank to be created. Each well must be fitted within an electronic data logger that is capable of taking and recording a measurement every six hours.
 - b. *Surface water.* Two staff gauges must be installed in each mine cell or area to monitor surface water levels at the lowest and the highest preconstruction grade elevations. Each gauge must be fitted with an electronic data logger capable of taking and recording measurements every six hours.
 - (4) Lee County will periodically review the monitoring requirements to determine if a reduction or elimination of the monitoring requirements are justified. Justification for reduction or elimination will be based on non-exceedance of baseline or Class 1 (based upon FAC 62-302.400) water quality standards by waters within the project. In the event that a laboratory analytical result indicates that a surface water or groundwater sample exceeds baseline or Class 1 standards, verification sampling and laboratory analytical testing must be performed by the mine operator as permittee. Non-exceedance of baseline or Class 1 standards in subsequent tests will keep the project in compliance. Any exceedance of the applicable standards by the project, after verification testing, will require immediate cessation of use of the items causing the exceedance. A revised management plan must be submitted,

within 60 days of the test identifying the exceedance, setting forth the changes that will or have taken place to continue operation of the mine without further exceedance of the standards for the water on and emanating from the project.

Sec. 12-118. Monitoring requirements; inspections.

(a) *Purpose.* Given the overall life of mining operations, adjustments to the design, maintenance, operation and monitoring of the mine excavation may be appropriate over time. By requiring monitoring reports at consistent intervals over time the County and applicant/mine operator will have a realistic opportunity to discover and address adverse impacts precipitated by the mine activity.

(b) *Comprehensive/cumulative monitoring report.* A five year cumulative monitoring report, including all elements required to be monitored under this section and the MEPD resolution, is required every five years, beginning with this initial MOP approval under this article, and at the time of MOP renewal. The purpose of the report is to identify trends with respect to the elements monitored in order to determine whether certain actions or changes are appropriate to increase compatibility of ongoing mine activity with its surroundings.

(c) *Monitoring reports.* Monitoring reports must be submitted in accord with this section unless the MEPD resolution conditions provide otherwise.

(1) *Water quality.*

In addition to the requirements set forth in section 12-117, the operator of the mining operation together with the property owner must submit an annual report that provides:

- a. Copies of periodic surface, and groundwater levels and quality monitoring requirements, at intervals determined by Natural Resources or as conditioned in the MEPD approval, pertaining to the baseline levels identified in the approved pre-development analysis and those anticipated for use in conjunction with the proposed mining project. All data must be submitted in an electronic format as set forth in section 12-117(d).
- b. Water quality parameters to be tested for both the surface and groundwater are listed on Table 1: Water Quality Monitoring Check List set forth in appendix O.
- c. Signed and sealed bathymetric surveys covering the new areas excavated and providing the depth of the existing excavation as well as the quality and type of materials excavated.

- d. Details of noncompliance events, data trends, and methods of resolving such events.
- e. Water level measurements must be conducted under the guidance of a Florida registered professional engineer with an established quality assurance plan. The report must be signed and sealed certifying accuracy and supervision of data collection.

This report must be submitted to the Department of Community Development every year beginning on the anniversary of the date that the mining operation received the first MOP to commence the mining operation. A report must be submitted annually until the reclamation of the mining operation is complete.

- f. The monitoring report must use the data collected during the previous year and state any cumulative trends or noteworthy changes in discharge concentration or volumes related to background, as well as any modification necessary in the operating procedures to better manage/reduce negative impacts or trends. If management measure modifications were proposed in a previous report, the subsequent monitoring report must include an evaluation of the effectiveness of the proposed modification in controlling negative trends or impacts.
- g. Additional monitoring issues as set forth in the MEPD resolution and MOP approval.

(2) *Environmental.* The annual monitoring report must include the following:

- a. An updated exotic removal plan.
- b. Areas proposed to be mined and progress in relation to the reclamation plan.
- c. Indigenous preserve status including any replanting updates.
- d. Conditions of plants installed or retained within buffer areas.

(3) *Traffic.* The annual report must address the items outlined in section 12-116(d).

(4) *Five year cumulative monitoring report.* A report meeting the criteria set forth in section 12-118(b) is required every five years beginning with this initial MOP approval under this article.

(d) *Adjustments to mine operating permit.* The cumulative monitoring reports submitted every five years and with the MOP renewal request will be reviewed to determine whether any adverse impacts are precipitated by the mine operation. Adjustments to the mine site plan intended to eliminate or ameliorate the impacts to the greatest extent possible may be required as a condition of the MOP renewal approval or in response to adverse conditions evidenced by the interim five year cumulative report.

(e) *Inspections.* The County staff has a right to enter the mine property upon reasonable notice to the mine operator to verify the information provided as part of the monitoring reports or to otherwise inspect the mine operation and property.

Sec. 12-119. Reclamation requirements.

(a) *Reclamation plan.* The excavated lake must be designed to ensure appropriate native wetland areas will be created as a littoral shelf to provide long term water quality benefits; a source of natural organics for the lake; and wildlife habitat. Additionally, the final shoreline configuration outside of the littoral zone created wetland areas must be designed to prevent shoreline erosion. The overall reclamation plan must provide long term plans to sustain or improve the baseline water quality as well as sustain healthy fish and wildlife populations.

Plans and other appropriate documents accurately depicting the plan of reclamation, consistent with the standards detailed in section 12-119(b) are required. The reclamation plan must be consistent with the mining plan and include:

- (1) Typical section indicating side slopes, the depth of excavation and proposed seasonal water levels.
- (2) Sufficient cross-sections, notes, and details to illustrate compliance with the minimum reclamation plan standards listed in Section 12-119(o).
- (3) Proposed elevations, depth of topsoil and other soil amendments and final grading plan.
- (4) A schedule for the commencement and phasing of reclamation, and the planting plan for the littoral zone created wetland areas and any indigenous replanting including the species, quantities, and size upon planting. The reclamation must begin no later than 30 calendar days after completion of mining as identified in the mining plan in compliance with section 12-110(a)(15). Reclamation must be completed within 6 months or when mining in a mining cell or area is completed in accord with the MOP.
- (5) A detailed analysis of the estimated cost for the reclamation program for each increment of the mining plan. The analysis must include breakdowns for the

cost of grading, resloping of the lake banks, topsoil, grass stabilization, littoral zone creation, plant installation, monitoring, exotic and nuisance plant species maintenance and any other work required to complete the reclamation of the area.

- (6) The created wetland littoral shelf must be designed and incorporated into the mine excavation. The mine lake bank cannot be back filled to create the wetland littoral shelf, but must be designed into the lake excavation.
- (7) *Bank slope.* After excavation is complete and upon reclamation of the site, the banks of the excavations outside of the required marsh creation area must be sloped at a ratio not greater than 6 horizontal to 1 vertical from the top of the finished grade to a water depth of four feet below the dry season depth. Deviation or variance from the slope requirement is prohibited.

(b) *Reclamation Standards.* Mining operations will be subject to the following reclamation standards to ensure long term plans to sustain or improve the baseline water quality as well as sustain fish and wildlife. 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. These conditions are not intended to conflict with the wetland permitting requirements of the U.S. Army Corps of Engineers, Florida Department of Environmental Protection or South Florida Water Management District.

- (1) All disturbed areas of the mine site including the top of lake banks must be stabilized with native plants, sod or grass seeding at completion of mining or completion of a separate mining cell or area.
- (2) Reclamation must be completed along the perimeter of the excavation and within the excavated lake. A minimum area equivalent to 25 percent of the post construction lake (mine footprint) surface area must have a littoral zone composed of created wetlands to improve water quality and create wildlife habitat. These created wetlands must be a minimum of 50 feet wide and meandering up to 100 feet in width for an expansive wetland littoral zone.
- (3) The entire created wetland littoral zone must be planted with native herbaceous wetland plants (3' on center). In addition, 10 percent of the created wetland littoral zone must consist of native wetland shrubs (10' on center) and native wetland trees (25' on center).
- (4) Created littoral zone native wetland plants must meet or exceed the following standards: Herbaceous plants bare root; shrubs 12" in height; and, trees 3' in height.

No more than 25% of one plant species can be utilized within the created littoral wetland zone. At least six native species must be installed as part of the created littoral wetland zone.

- (5) The created wetland littoral zone must be designed with an appropriate slope to provide a littoral shelf that reaches a depth of not less than -3.0 from control elevation or seasonal high water level.
- (6) 80 percent survival of herbaceous wetland plants, trees and shrubs must be met within five years of planting and maintained in perpetuity. The created littoral shelf must be maintained free of exotic or nuisance plant species in perpetuity.
- (7) The mine reclamation required should be designed to compliment post mine uses. The created wetlands may be used as wetland impact mitigation required by federal, state or water management district permits.
- (8) The created wetland littoral zone areas must be protected from impacts during and after mining. If the agricultural use of livestock is the intended post mine use, adequate fencing must be installed to protect the created littoral zone from livestock damage.
- (9) If appropriate, organic soils (muck) must be excavated from impacted wetlands on the site and placed in the created littoral zone wetland areas. The existing 'A' and 'B' soil horizons must be utilized to ensure successful wetland creation. The 'A' horizon must be stored in a manner that prevents the soil from oxidizing. The 'B' horizon may be stockpiled. The 'B' horizon will be placed over a base of sand with the 'A' horizon placed over the 'B' horizon during the reclamation process.
- (10) The reclamation design must include varying depths within the created wetland littoral zone to provide foraging "pockets" for woodstorks and other wading birds as water levels recede.
- (11) All spoil piles and stockpiles of material must be removed from the site or incorporated into the reclamation plan when the excavation is completed.
- (12) A recorded Conservation Easement dedicated to the County and any other appropriate government organization for all indigenous preserves, indigenous replanting areas, preserved or restored flowways, buffers, wildlife habitat areas, and the created marsh wetland littoral shelf zone may be required as part of the reclamation.

- (13) Monitoring reports for the littoral plantings for each mining cell or area in the mining plan must be submitted annually starting with the completion of contouring and continuing through the installation of the littoral plants (Time Zero Report) for at least five years.

Sec. 12-120. Surety or assurance of completion.

The County may require, as a condition of MEPD or MOP approval or renewal, surety provisions and instruments deemed necessary to allow approval of the mine activity and ensure protection of the public health, safety and welfare or to otherwise ensure completion and operation of the project in accord with all applicable approvals.

The standards set forth in Lee County Administrative Code 13-19 relating to surety instruments control with respect to submittal form and substance.

Sec. 12-121. Existing mine operations.

(a) *Existing mine defined.* An existing mine is a mine operation approved by the Board of County Commissioners or Hearing Examiner prior to September 1, 2008 that meets the following criteria:

- (1) Approved by special exception under chapter 34; **or**
- (2) Approved as an Industrial Planned Development (IPD) or Residential Planned Development (RPD) under chapter 34 and has a valid/current master concept plan in place; **and**
- (3) The right to pursue mining activity on either the special exception or IPD/RPD zoned property has not expired under the terms and condition of the zoning approval.

(b) *Continuing existing mine activity.* An existing mine may continue to operate and obtain MOP approvals if:

- (1) The underlying zoning approvals as noted in section 12-121(a) remain valid; **and**
- (2) The mine has a valid LDO/MOP approval in place prior to September 1, 2008, and continues to obtain MOP renewals in accord with this section; **OR**
- (3) The existing mine without a MOP approval in place as of September 1, 2008, obtains a MDO approval, encompassing the entire mine boundary approved under the special exception or IPD/RPD resolution, in accord with section 12-

121(c) on or before December 31, 2013; and, thereafter obtains a MOP approval on all or a portion of the mine project no later than ten years after the date the MDO is issued.

Extension of the MDO approval is prohibited. If the mine operator fails to obtain a MOP on all or a portion of the mine project within ten years after the MDO is issued, a new MDO approval must be obtained in accord with section 12-121. The mine operator will be subject to compliance with all amendments to the provisions of section 12-121 adopted subsequent to the initial MDO approval (i.e. the approval issued prior to December 31, 2013). For purposes of this section the phrase "all or a portion of the mine" means (a) at least 20% of the gross acreage encompassed by the entire mine boundary; and, (b) including area to be excavated; but, (c) may not encompass solely mine footprint area or accessory mine uses.

If a mine required to comply with this subsection is the subject of litigation that will likely prevent the mine operator from obtaining a MDO by December 31, 2013, the County will toll the time required to comply with this provision provided: (a) the mine operator is diligently pursuing conclusion of the litigation that prevents compliance with this provision; (b) the mine operator provides the County with a copy of the pleadings concurrent with their filing or receipt, or as close to this time frame as reasonably possible; (c) the mine operator notifies the County as to settlement or other conclusion of the litigation within five business days after action by the tribunal; and, (d) the mine operator files a MDO application within 6 months after the litigation is concluded and obtains a MDO approval during the time attributable to the tolling/pendency of the litigation, including the six month preparation period mentioned above.

(c) *Submittal requirements for existing mine MDO approval.* An application for existing mine MDO approval must be submitted on a form prepared by the County and be accompanied by the appropriate fee. The application will be processed in accord with the procedure set forth in section 12-108(e) through (h). The application must include the following:

- (1) *Underlying zoning approval.* A complete, legible copy of the approved and fully executed zoning resolution or Hearing Examiner decision permitting the mining activity.
- (2) *Legal description and sketch.* A legal description and sketch, complying with the requirements of section 34-202(a)(1), encompassing the entire mine project boundary, including conservation or preserve areas required by the underlying mine approval.

- (3) *Owner, applicant/developer information.* This information must be consistent with the provisions set forth in section 10-253(2).
 - (4) *Traffic impact statement.* The TIS must be consistent with the requirements set forth in section 12-121(g)(9).
 - (5) *Traffic mitigation plan.* Consistent with the provisions of section 12-121(g)(9).
 - (6) *Existing Agricultural use affidavit.* This affidavit must meet the requirements set forth in section 34-202(b)(7).
 - (7) *Narrative of proposed mine operation.* Consistent with section 12- 110(a)(11).
 - (8) *Mining plan.* Consistent within section 12-110(a)(15).
 - (9) *Engineering site plans* meeting the provisions of section 12-121(f).
 - (10) *State and Federal permits.* Copies of state and federal permit applications, including drawings and related correspondence.
 - (11) *Surface water management permit.* Copy of the approved surface water management permit for the site.
 - (12) *Pollution Prevention Plan.* Copy of pollution prevention plan consistent with section 12-121(g)(13).
 - (13) Copies of recorded conservation easements required by the conditions of the underlying zoning or MDO approval.
 - (14) Site landscaping and engineering plans detailing any changes to the plans previously approved under the existing zoning approval.
- (d) *Amendment of existing mine MDO approval.* The MDO approval may be amended in accord with the provisions set forth in section 10-118(a) and (c). The amendment application will be reviewed in accord with the provisions of section 12-121.
- (e) *Initial MOP approval for existing mines.* MOP approval is granted when the final Certificate of Compliance for the underlying MDO is issued by the County. The request for a MOP (or final MDO Certificate of Compliance) must be made on the form prescribed by the County. The application must include the following items:
- (1) Proof as to County acceptance of the surety documents required as a condition of County approval, including but not limited to, off-site roadway maintenance and reclamation.

- (2) Documents required by the underlying zoning to be approved prior to the issuance of the MOP.
- (3) Letters of substantial compliance from appropriate professionals registered in the State of Florida, along with evidence of County inspection and approval as to:
 - a. Site landscaping.
 - b. Infrastructure installation, including roads, utilities.
 - c. Site depth, if applicable.
 - d. Other conditions set forth in the underlying zoning or MDO approval.

(f) *Site map and engineer plan set for existing mine MDO or MOP renewal/approval.* A series of maps and engineering plans, including drawings prepared and sealed by an appropriate registered professional in the State of Florida (e.g. engineer, architect, surveyor) must be provided to obtain MDO or MOP approval in accord with the provisions of this section. This map and plan series must meet and include the following minimum criteria:

- (1) Be drawn at an appropriate scale to allow all information to be clearly and legibly depicted and described. A consistent scale between the maps and plans is preferred and recommended to assist in review of the information provided and to minimize the need to request additional submittals.
- (2) Identify the date each document is prepared and any subsequent revision dates.
- (3) Include a north directional arrow, pointing to the top of the page or to the left side of the page.
- (4) Include a certification statement specifically stating: "I, the undersigned, hereby certify that this map is correct, and shows the information required by the requirements of the Land Development Code to obtain a MDO or MOP.
- (5) *Mining plan.* Consistent with the mining plan, the extent of the area to be mined (i.e. mine footprint and depth) must be depicted. This includes all proposed mine cells or areas. Other mine uses and facilities must also be depicted.
- (6) The names and location of existing:

- a. Streams, creeks, sloughs, natural flowways, floodways, wetlands, and water bodies within the determined watershed area.
 - b. Indigenous vegetation areas.
 - c. Wildlife habitat areas.
 - d. Easements within the property boundary (as identified on the required title opinion) including publicly and privately owned Conservation easements and the means by which access to the easements is obtained.
 - e. Percolation ponds and drainfields within the determined watershed area.
 - f. Public and private roads; and vehicle access routes to nearest county-maintained road.
 - g. Railroad.
 - h. Utility lines and easements.
 - i. Existing buildings.
 - j. Cemeteries within 100 feet of the property boundary.
 - k. Test boring locations.
 - l. Public wellfields within a one mile radius around the mine boundary.
 - m. Public and permitted private wells with GPS or surveyed locations of wells along with wellhead elevations within a one mile radius around the mine property boundary.
- (7) The specific locations and descriptions of the following areas required under the existing zoning approval:
- a. Conservation and preservation areas, along with the access to these areas.
 - b. Buffers and required setbacks.
 - c. Indigenous areas to remain and indigenous replanting areas.

- d. Littoral zone created wetland areas.
 - e. Physical plant facilities or other facilities supporting the operation, including but not limited to, scale houses, administrative offices, proposed fueling, vehicle servicing, and truck and tire washing facilities.
 - f. Accessory mine operation facilities such as, but not limited to, rock crushing operations, concrete and asphalt batch plants, cement plants etc.
 - g. Stockpile areas, including a typical cross-section of the area.
- (8) Profile plans showing:
- a. The proposed depth of excavation and slope of banks during excavation operations and after reclamation.
 - b. The proposed littoral zone created wetland areas.
 - c. Buffer areas.
 - d. Any other areas that need a cross-section to demonstrate compliance with the code requirements.
- (9) *Engineering plans.* Engineering plans must be provided with a level of detail that would otherwise be found sufficient to allow issuance of a development order under chapter 10 for the proposed mine activity, including but not limited to the following items:
- a. Traffic related issues:
 - 1. Vehicular ingress and egress to the project from the public right of-way, including site related improvements required under section 12-116.
 - 2. On-site access roads and truck staging areas; services delivery areas and off-street parking areas.
 - 3. Traffic count stations required under section 12-116(b)(2).
 - b. Water related issues:
 - 1. Monitoring wells required under section 12-117(a), (b) and (d).

2. If dewatering is proposed, the details of the proposed activity must be provided in accord with the provisions set forth in section 12-117.

(10) Environmental issues:

- a. *Drainage and stormwater management plan.* A drawing showing the location of all curbs and gutters, inlets, culverts, swales, ditches, water control structures, water retention or detention areas, and other drainage or water management structures or facilities must be submitted. Sufficient elevations must be shown to adequately depict the direction of flow of stormwater runoff from all portions of the site. A copy of all drawings and calculations submitted to the South Florida Water Management District or the Department of Environmental Protection must also be submitted. The plan must identify the U.S. Department of Agriculture Soil Conservation Service soils classifications of the site to determine the feasibility of the proposed pollution control and drainage plans.
- b. Reclamation plan meeting the requirements of section 12-121(g)(17).

(11) *Proposed buildings or proposed structures.* The building envelope, including the perimeter of the area within which the building will be built, the height of all buildings and structures, the maximum gross floor area, and a depiction of no less than the minimum number of required parking spaces, including handicapped spaces.

(12) *Utilities.* A statement indicating the proposed method intended to provide water, sewer, electricity, telephone, refuse collection and street lighting, including but not limited to:

- a. The names and address of all utilities, governmental or private, intended to supply the service.
- b. The names and addresses of the owners of all existing public water and sewage systems within one-quarter mile of the proposed development.
- c. A plan showing the location and size of all water mains and services, fire hydrants, sewer mains and services, treatment plants and pumping stations, together with plan and profile drawings showing the depth of utility lines and points where utility lines cross one another or cross storm drain or water management facilities. The location of services must be shown.

- (13) *Blasting.* If blasting is to be performed,
- a. A copy of the Blasting Permit issued from the State Fire Marshal's Office.
 - b. A list of materials used in the blasting process along with the Material Safety Data Sheets for these substances.
- (14) *Exterior lighting plan, photometrics and calculations.* An exterior lighting plan and photometric information must be submitted. The plan and photometric information must be provided in full compliance with section 34-625 and demonstrate compliance with all standards and criteria specified therein.
- (15) *Calculations and other pertinent materials.* The Director may also require submission of calculations in support of all proposed drawings, plans and specifications as well as additional information consistent with section 12-121(g) to address issues not reflected the by the balance of the requirements set forth in section 12-121(f). Calculations, data and reports to substantiate engineering designs, soil condition, flood hazards, compensation of floodplain storage (see section 10-253), wet season water table, etc., may be required.

(g) *Renewal of an existing mine operating permit by an existing mine.* Existing mines will be required to obtain a MOP under the provisions of chapter 12 as set forth below. The ability to renew an existing MOP is specifically limited to mines that have a valid limited development order (LDO) or mine operating permit allowing mining activity in place on September 1, 2008; or, a MOP issued in accord with section 12-121(b)(3). The request to renew the mine operating permit must be filed at least 90 days prior to the expiration of the existing mine operating permit issued as a result of the LDO approval or MOP approval under this section. A MOP issued under this section is valid for a period of ten years, provided however, if a MOP renewal is timely filed and diligently pursued the previous MOP approval will remain in effect until a renewal is issued. The request to renew must be filed on the MOP renewal form prescribed by the County and be accompanied by the appropriate fee. MDO applications will be processed and reviewed in accord with section 12-109(b)(4). The submittal must provide the following:

- (1) *Permit Approvals.* A copy of all permit approvals issued by Lee County, including zoning, development orders, transportation, environmental, natural resources, and wells; along with copies of all State and federal permit approvals issued to support the operation of the mine.
- (2) *Legal and sketch of the mine project boundary.* This submittal must meet the requirements of section 12-121(c)(2).

- (3) *Owner, applicant, mine operator information.* This information must be consistent with the provisions set forth in section 10-153(2).
- (4) *Existing Agricultural use affidavit.* This affidavit must meet the requirements set forth in section 34-202(b)(7).
- (5) Narrative addressing compliance with conditions of the zoning or special exception approval issued prior to September 1, 2008.
- (6) *Survey.* A Bathymetric Survey signed by a surveyor licensed in the State of Florida. The bathymetric information must be overlaid, along with the mining site plan (or master concept plan for the initial MOP renewal or approval for an existing mine), on a copy of the most recent aerial photo available.
- (7) *Mining plan.* The existing phasing schedule must be replaced with a mining plan meeting the requirements of section 12-110(a)(15).
- (8) *Monitoring reports.* A copy of all monitoring reports required by the underlying County approvals as well as the five year comprehensive monitoring report required under section 12-118(b).

A letter from the Division of Natural Resources indicating that they have received the required water monitoring reports in the appropriate format.

- (9) *Transportation.*
 - a. A letter from the Department of Transportation confirming that the roads providing access to the mine have been inspected and there is no evidence of damage from the mine activity. If there is damage that needs to be repaired, a permit must be obtained from the Department of Transportation for work in the right-of-way. If the damage is not repaired prior to issuance of the renewal permit, it will become a condition of the MOP renewal.
 - b. An updated TIS with a particular emphasis on need for turn lanes if they are not already in place.
 - c. A letter from the Department of Transportation detailing additional conditions deemed necessary to approval of the MOP renewal.
- (10) *Environmental issues.*
 - a. Documentation regarding the status of existing exotic vegetation removal; required buffers, indigenous preservation and open space.

If exotic removal is not an on going activity, a proposed plan to address exotics must be submitted.

- b. Updated protected species survey.

(11) *Water issues.*

- a. A site map depicting the following:
 - 1. The project boundaries.
 - 2. The location of all known wellfield protection zones within a five mile radius of the project.
 - 3. The distance to the closest known wellfield.
- b. A water budget that addresses both surface and groundwater on the total project and possible changes that will occur once mining is concluded.
- c. Soil borings must extend to either the top of the confining zone of the proposed mine aquifer or ten feet deeper than the proposed depth of the mine cell or area, whichever is greater. Borings must be taken within the footprint of each proposed mine cell or area and must occur at every one-foot of elevation change within the mine cell or area.
- d. Wet and dry season water levels prior to any development. These water levels must be derived from either a minimum of three years of actual onsite data taken prior to development of the mine and approved by Lee County, or based upon data obtained from a Lee County accepted source that provides a minimum of five years of data.
- e. Public and permitted private wells with GPS or surveyed locations of wells along with wellhead elevations within a one mile radius around the mine property boundary.
- f. Documentation indicating that sets of two wells or Piezometer Tubes have been installed meeting the following minimum criteria: (0' to 8'), (0' to 25') and a set of wells was placed at every one-foot of elevation change throughout the project.
- g. Evidence that the mine operator has installed a pair of wells meeting the following requirements: one well extends to the lowest depth of the sand formation; and the second well extends to the proposed bottom

depth of the mine. The second well must record water quality and level profiles for every change in material until the bottom depth of the proposed mine is reached.

(12) *Dewatering.* If the underlying zoning approval specifically allows dewatering activities:

- a. A dewatering plan in compliance with the provisions of section 12-117(c) denoting the routing of dewatering effluent. Depict location and cross-section of hydraulic recharge trenches and staff gauge locations.
- b. A table of pumps used stating diameter, horsepower, maximum gallons per minute that a pump can deliver and depth of dewatering. Also provide the total amount of water that can be pumped if all pumps listed were running at full throttle.
- c. A copy of the South Florida Water Management District Water Use Permit.

(13) *Pollution Prevention Plan.*

- a. Copy of the Storm Water Pollution Prevention Plan (SWP3) prepared in compliance with section 14-477.
- b. A letter from Lee County Natural Resources (Pollution Prevention Section) indicating its inspection confirmed that the site is using Best Management Practices in the handling, storage and disposal of regulated materials.
- c. An updated Pollution Prevention Plan (PPP).
- d. A copy of the approved pollution prevention plan for all mechanical repair/maintenance activities addressing all storage, handling, fueling and disposal practices of hazardous materials/waste. The Plan should contain the following:
 1. A contaminated soil recovery component that includes storage of recovered contaminated soils protected from the weather. All disposal receipts of contaminated soils must be provided to the Pollution Prevention Program within 24 hours of soil disposal.
 2. A requirement that all disposal receipts of contaminated soils must be provided to the Pollution Prevention Program within 24 hours of soil disposal.

3. Requirement that any spill of regulated materials such as oils, greases, fuels, solvents, equipment/vehicle coolants, and liquid explosive materials in excess of 10 gallons must be reported within five business days to the Pollution Prevention Program at (239) 652-6126.
4. Requirement that mechanical operational activities must comply with all applicable regulations contained within Lee County's Hazardous Waste Ordinance 07-03.
5. Requirement that all materials utilized in explosive activities must be approved for use before brought on-site and be under the control of a Florida licensed User or Blaster at all times.
6. A list of regulated materials and their Material Safety Data Sheets for the regulated materials utilized on-site must be provided prior to being brought on-site and used.
7. A spill prevention plan for regulated materials. This plan must include the contact person's name, title and emergency phone number.
8. Documentation of First Responders notification.

(14) *Fire District/EMS.*

- a. A letter from the Fire District servicing the location of the mining operation stating the Fire Department has inspected the site and has approved the Fire Prevention Plan.
- b. If the site is required to have an emergency helicopter landing site, a letter from Lee County Emergency Medical Services Aviation Division confirming inspection of the landing pad and that the location and pad configuration are acceptable.

(15) *Utilities.* A letter from Lee County Utilities indicating review of the renewal application and their findings.

(16) *Blasting.* If blasting is to be performed,

- a. A copy of the Blasting Permit issued from the State Fire Marshals Office.

- b. A list of materials used in the blasting process along with the Material Safety Data Sheets for these substances.

(17) *Reclamation.*

- a. A copy of the previously approved phased reclamation plan.
- b. A reclamation schedule for the mining site.
- c. Documentation as to status of the reclamation activity to date.

(18) *Surety.*

- a. An updated cost estimate for all areas that will require reclamation within the boundary of the project.
- b. A new surety to reflect any deficiencies in bond amounts already provided to Lee County for reclamation of the site at 110% of the approved cost estimate.

(19) *Violations.*

- a. If the mine has received a mine inspection report from Lee County depicting a violation that is unresolved, provide a detailed plan with respect to the manner and timing of activity to correct the existing violation.
- b. If the mine has received findings of non-compliance for this site from agencies other than the County, provide information as to the nature of the problems, identifying the agency issuing the non-compliance determination, along with a detailed plan and schedule regarding the action to be taken to eliminate the non-compliance issue.

(h) *Waiver from submittal requirements.* Upon written request, the Director may modify or waive the submittal requirements where it can be clearly demonstrated that the submission will have no bearing on the review or processing of the application. The request and the Director's written response must accompany the application submitted and will become part of the permanent file.

(i) *Conditions of approval.* The Director has the authority to issue the MOP renewal approval subject to conditions applicable to the following issues, even if not previously addressed in the underlying zoning approval supporting the existing mine:

- (1) Compliance with the transportation impact mitigation issues set forth in section 12-116(c).

- (2) Removal of invasive exotics in accord with section 12-113(n).
- (3) The MDO approval or MOP renewal for an existing mine must permit excavation to the stated depth within the specific mine footprint approved under the most recent zoning approval issued prior to September 1, 2008 for an existing mine project.

(j) *Limited amendments to existing mine zoning approvals.* Amendment to existing mine zoning approval constituting a substantial change must be approved through the public hearing MEPD process; provided, however, an existing mine, meeting the criteria set forth in section 12-121(a), may obtain a limited amendment to the underlying zoning approval for dewatering or an extension of the mine duration as follows:

- (1) The mine operator must file an application on the form prescribed by the County along with the appropriate fee. The contents of the application must include, at minimum, those items set forth in section 12-121(g); and
 - a. *For dewatering:* submittals addressing the issues set forth in section 12-117(c).
 - b. *For an extension of mine duration:*
 - 1. A narrative substantiating the need for the extension and its proposed duration.
 - 2. Submittal substantiating compliance with the following additional criteria:
 - i. Continued consistency with the Lee Plan.
 - ii. Compatibility with existing and approved development in the surrounding area.
 - iii. Whether the extension will place an unreasonable burden on essential public facilities and infrastructure.
 - 3. Documents establishing that the extension request was filed at least 6 months prior, but not more than 1 year before, the expiration date set forth in the underlying zoning approval; and, that the mine was in active physical operation at the time of the request.
- (2) The request for a limited amendment under this section may only be filed if the underlying zoning is valid at the time the request is filed.

- (3) The request for a limited amendment must be processed in accord with the procedure set forth in sections 34-83 and 34-145, including the review criteria, regarding Hearing Examiner and Board review and action on the request.
- (4) This subsection may not be expanded to include other amendments to the underlying zoning approval, even if filed in conjunction with the request to dewater or extend the mine duration.

Sec. 12-122. Post mining use of land.

Post mining plan/Future uses. Due to the increased vulnerability of groundwater contamination from overlying land uses in mining areas, stringent and diligently applied measures are required to protect groundwater quality. Urban and other land uses that include land management practices such as fertilization, stormwater management, chemical application, and irrigation may be prohibited or restricted to protect groundwater from contamination.

As part of the MEPD application, the applicant may submit a conceptual plan of post mining uses that considers the unique aspects of mined areas, including but not limited to, open pits with steep walls, littoral zone created wetlands, preservation areas, wildlife habitat and the interplay between proposed future uses, including associated impacts on the environment. The conceptual post mining plan will not impede the review and approval process for mining activities.

Given the longevity of mine operations and the economic benefit realized over the life of the mine, post mining uses may be appropriately limited to address public health, safety and welfare concerns. Subsequent to use of the property for mine operations, a rezoning request may be filed and considered by the County in accord with the provisions of chapter 34. However, a property owner does not have a vested right to achieve post mine density and intensity otherwise attributable to land that has not been the subject of mine activity.

Sec. 12-123. Enforcement; violations

(a) *Liability.* As a condition of the issuance of any MOP the mine operator will be subject to liability for damages resulting from the discharge, emission, spill or release of substances, from vibrations, noise or groundwater withdrawals or pit dewatering caused by the mine operator, or from failure of the mine operator to complete reclamation of lands as required.

(b) *Inspections.*

- (1) Mine operators must allow representatives of the County that are Mine Safety and Health Administration (MSHA) certified, unrestricted access to the mine property at reasonable times for the purpose of performing inspections to

ensure compliance with the terms and conditions of approved zoning, permit approval conditions, and all other County regulations.

Mining operators must allow County inspectors that are not MSHA certified access, with an escort if required, to all areas of the mine property at reasonable times for the purpose of performing inspections to ensure compliance with all County regulations and approvals.

- (2) By requesting or obtaining a MEPD, MDO, or MOP approval under this chapter, the owner/mine operator consents to and grants County staff reasonable access, in accord with section 12-123(b)(1), during regular mine business hours, with or without advance notice from the County.
- (3) The mine operator must inform County staff about specific on-site safety training requirements for the mine operation. These on-site safety requirements must be part of the mine's overall safety training program for vendors and employees. If the established training requirements are amended or changed, the mine operator must provide the County staff with notice of the changes within 48 hours of their adoption.
- (4) The mine operator must provide County staff conducting mine site inspections with the opportunity to attend all required site specific safety training sessions free of charge. If the on-site safety training program is amended, the mine operator must provide County staff with an opportunity to receive the safety training within two weeks of the date the requirements are added to the program. The mine operator must provide a copy of the safety program manual, along with any modifications to County staff.
- (5) If a MSHA certified County inspector arrives at the site and is denied access, due to the implementation of the new or changed on-site specific safety training requirements, and the mine operator failed to provide the County with notice of the change as required in section 12-123(b)(4), the County inspector will find that a violation of this section has occurred.

(c) *Violations.* The following actions constitute a violation of this article and are prohibited.

- (1) Failure to comply with the terms, criteria, standards or requirements of this article.
- (2) Failure to comply with the terms and conditions of the MEPD, MDO, MOP or any other approval adopted or issued by the Board of County Commissioners, Lee County Department of Transportation, or the Director of Development Services pursuant to lawful authority.

- (3) Failure to obtain the permits and approvals required by this article.
- (4) Knowingly making a false statement, representation or certification in an application, report, record, plan, map or other document filed or required to be filed or maintained under this article.
- (5) Falsifying monitoring reports or using monitoring information that the mine owner knows or has reason to believe is inaccurate due to tampering with a monitoring device required to provide information under the provisions in this article or as a condition of approval.
- (6) Failure to timely notify the Director with respect to any changes to the MEPD resolution or MOP approval ordered by a local, State or Federal agency.
- (7) Failure to provide the Director with copies of any notice of violation, noncompliance order, stop-work order or other written notice affecting the mine operation issued by a State, Federal or local agency within 48 hours of receipt of the notice.
- (8) Violation of applicable statutes or regulatory requirements imposed by Federal, State and local agencies relating to the regulation of mining.
- (9) Failure to comply with the inspection site access requirements listed in section 12-123(b)(1).
- (10) Exceeding the established maximum excavation depth or exceeding the approved limits of excavation.
- (11) Allowing or causing the water levels to fall below the approved design standards.
- (12) Failure to timely file monitoring reports required under this article.

(d) *Administrative Enforcement Procedures.* Administrative enforcement of a violation of this chapter may be pursued by the County in accord with the procedures set forth in section 2-420 *et seq.* and Ch. 162, Florida Statutes, as modified below.

- (1) *Increased fines or penalties.*

Under the provisions of section 162.09(d), Florida Statutes, the Board of County Commissioners hereby adopts, by a vote of at least a majority plus one, the provisions necessary to grant the Lee County Code Enforcement Hearing Examiner the power and authority to impose fines in excess of \$500 per day, per violation. Specifically, the Board grants the Hearing Examiner with the authority to impose:

- a. A fine of up to \$1,000 per day per violation for the first violation.
 - b. A fine of up to \$5,000 per day per violation for a repeat violation.
 - c. A fine of up to \$15,000 per violation if the Hearing Examiner finds the violation to be irreparable or irreversible in nature.
 - d. The Hearing Examiner may also impose additional fines to cover all costs incurred by the County in enforcing the provisions of this chapter.
- (2) *Findings for imposition of increased fines.* In order to determine the amount of the fine, the Hearing Examiner must consider:
- a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation;
 - c. Any previous violations committed by the violator; and
 - d. The timeliness of the actions taken by the mine operator to address the violation once notified of its existence.
- (3) *Notice and hearing for violation constituting irreparable or irreversible harm.* If the Code Enforcement Officer inspection reveals a violation of an irreparable or irreversible nature, the officer may immediately request a special hearing before the Lee County Code Enforcement Hearing Examiner to be held within ten business days of the request. Notice of the hearing will be provided to the mine operator, by hand delivery to the mine administrative offices, at least 72 hours prior to the hearing. If the Hearing Examiner finds a violation constituting irreparable or irreversible harm, a fine of up to \$15,000 may be imposed for the violation.
- (e) *Judicial Enforcement Procedures.*
- (1) *Citation.* Judicial enforcement of a violation of this article may be pursued by the County in accord with the procedure set forth in section 2-430 and Ch. 162, Florida Statutes, as modified below.
- a. In the event the Code Enforcement Officer finds a violation of an irreparable or irreversible nature, the officer may immediately issue a citation for county court. The citation may be properly delivered to the mine operator by hand delivery to the mine administrative offices.
 - b. In addition to a fine of up to \$500 for the violation, the violator/mine operator may be sentenced to a definite term of imprisonment, not to

exceed 60 days, in a municipal detention facility or other facility authorized by law.

- (3) Each violation of this article be may also be prosecuted in the same manner as a first degree misdemeanor pursuant to section 125.69 of Florida Statutes, as amended.

(f) *Suspension and Revocation.* The Director, may post a stop work order, or suspend or revoke a MOP where a determination is made that the mine operation is in violation of the terms and conditions of this article, the MEPD resolution, MOP conditions or other local, state or Federal regulations. The Director has the ability to take whatever action is deemed appropriate to resolve issues involving the mine operation that may affect the health, safety and welfare of the public. This includes, but is not limited to, revoking the MOP to the extent it allows off-site hauling, stopping all or part of the work on the site, adjusting operational work hours, posting a stop work order, modifying the conditions of the approved MOP or notifying the mine operator/owner that certain actions must occur to avoid any of the aforementioned actions.

(g) The County retains the right and authority to pursue enforcement of the terms of this article in accord with all other available remedies including injunction.

Sec. 12-124. Appeals.

A final decision of the Board of County Commissioners rendered with respect to a MEPD may be appealed in accord with section 34-85.

Decisions rendered by a Director under this article may be appealed in accordance with the provisions of section 34-145(a), unless otherwise specifically provided.

A decision of the Code Enforcement Hearing Examiner may be appealed in accordance with the provisions set forth in section 2-420.

SECTION THREE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 34

Lee County Land Development Code Chapter 34 is amended as follows with strike through text identifying deletions and underlined text indicating additional language.

CHAPTER 34

ZONING

ARTICLE II. ADMINISTRATION

DIVISION 2. BOARD OF COUNTY COMMISSIONERS

Sec. 34-83. Functions and authority.

- (a) *No change.*
- (b) *Zoning actions.*
- (1) *Function.*
 - a. The Board of County Commissioners must hold public hearings (see sections 34-231 through 34-236) on the following applications: rezoning, MEPD, extension and reinstatement of master concept plans, the special exceptions that meet the criteria for developments of county impact, appeals from decisions of the hearing examiner concerning wireless communications facilities, developments of regional impact, and any other action in conjunction with such applications.
 - b. *No change.*
- (2) *Considerations.* In rendering its decision, the Board of County Commissioners must consider the following:
 - a. The considerations set forth in section 34-145(ed)(2) which are applicable to the case.
 - b. *No change.*
- (3) *Findings.* Before granting any rezoning, special exception, or appeal of a hearing examiner decision ~~pertaining to a wireless communication facility~~, the Board of County Commissioners must find that:
 - a. The applicant has proved entitlement to the rezoning, MEPD, or special exception by demonstrating compliance with the Lee Plan, this land development code, and any other applicable code or regulation; and
 - b. through f. *No change.*
 - g. In the case of a planned development rezoning or mine excavation planned development, the decision of the Board of County Commissioners must also be supported by the formal findings required by sections 34-377(a)(2) and (4).
 - h. and i. *No change.*

(4) *Decisions and authority.*

a. In exercising its authority, the Board of County Commissioners:

1. and 2. *No change.*

3. Has the authority to attach such conditions and requirements to any approval of a request for a special exception, development of regional impact, planned development, mine excavation planned development, use of TDR or affordable housing bonus density units in conjunction with a rezoning request, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience or welfare of the general public. These conditions and requirements must be reasonably related to the action requested.

No further changes to the balance of this section.

DIVISION 4. HEARING EXAMINER

Sec. 34-145. Functions and authority.

(a) through (c) *No change.*

(d) *Zoning matters.*

(1) *Functions.* Regarding zoning matters, the hearing examiner has the following prescribed duties and responsibilities:

a. *No change.*

b. Make recommendations to the Board of County Commissioners on applications relating to the following:

1. through 7. *No change.*

8. Applications for mine excavation development planned approval under chapter 12.

(2) *Considerations.* In preparing his recommendation on any matter, the hearing examiner must consider the criteria set forth in subsection (c)(2) of this section as well as the following, if applicable:

a. through d. *No change.*

e. If the hearing concerns a mine excavation planned development, whether the request meets the criteria and standards set forth in chapter 12.

(3) *Findings.* Before preparing his recommendation to the Board of County Commissioners on a rezoning, the hearing examiner must find that:

a. through f. *No change.*

g. In the case of a planned development rezoning or mine excavation planned development, the decision of the hearing examiner must also be supported by the formal findings required by sections 34-377(a)(2) and (4).

No change to the balance of this section.

DIVISION 5. DEPARTMENT OF COMMUNITY DEVELOPMENT

Sec. 34-172. Powers and duties.

(a) *Administration of zoning regulations.* The administration of this chapter and chapter 12 ~~shall be~~ is maintained in the department of community development. The director is hereby authorized, empowered and directed to administer all the provisions of this chapter and any subsequent amendments thereto.

(b) *Authority to interpret provisions.* The director, in conjunction with the county attorney's office as necessary, ~~shall have~~ has the discretion consistent with this chapter and accepted rules of statutory construction to interpret and apply these provisions.

(c) *Application of zoning regulations.* No building or structure, or part thereof, ~~shall hereafter~~ may be erected, constructed, reconstructed or altered, and no existing use, new use or change of use of any building, structure or land, or part thereof, ~~shall~~ may be made or continued except in conformity with the provisions of this chapter.

(d) *Issuance of permits.* When a permit application furnishes all of the information and fulfills all of the requirements ~~which that~~ are conditions precedent to the granting of the permit, the director ~~shall~~ may issue the permit.

DIVISION 6. APPLICATIONS AND PROCEDURES FOR CHANGES, PERMITS, INTERPRETATIONS AND APPROVALS

Sec. 34-201. General procedure for applications requiring public hearing.

(a) *Initiation of application.* An application for a rezoning, mine excavation planned development under chapter 12, special exception, or variance may be initiated by:

(1) and (2) *No change.*

(b) *Application submittal and official receipt procedure.* The application procedure and requirements in this section apply to all applications for rezoning, special exceptions, and variances, except mine excavation planned developments under chapter 12.

Sec. 34-202. General submittal requirements for applications requiring public hearing.

(a) *All applications.* Every request for actions requiring a public hearing under this chapter, except mine excavation planned developments, must include the following. However, upon written request, on a form prepared by the county, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the director prior to submitting the application. A copy of the request and the director's written response must accompany the application and will become a part of the permanent file.

No change to the balance of this section.

Sec. 34-203. Additional requirements for applications requiring public hearing.

(a) *No change.*

(b) *Planned developments.* All planned developments, except mine excavation planned developments, must comply with the additional information submittal and procedural requirements set forth in section 34-373.

No change to the balance of this section.

Sec. 34-207. Excavations.

(a) Grading or excavation activities ~~which are~~ intended primarily to provide for the retention or detention of stormwater runoff must obtain a development order in compliance with procedures set forth in chapter 10.

(b) *Regulations.* Commercial mining excavations must comply with the requirements and procedures set forth in ~~sections 34-1651 through 34-1682 of this chapter~~ 12.

Sec. 34-211. Denials and resubmission of applications.

- (a) *Denial with prejudice.*
- (1) *No change.*
- (2) If an application is denied, no similar application for rezoning, mine excavation planned development, special exception or variance covering the same property, or portion of the property, shall be resubmitted or initiated for a period of 12 months from the date of denial. However, this shall not preclude the application for a different rezoning, special exception or variance which in the opinion of the administrative official is substantially different from the request originally denied.
- (b) *No change.*

DIVISION 7. PUBLIC HEARINGS AND REVIEW

Sec. 34-232. Required hearings.

- (a) through (d) *No change.*
- (e) Applications for mining excavation planned development (MEPD) require one public hearing before the Hearing Examiner and one public hearing before the Board of County Commissioners.

Sec. 34-233. Preliminary review and notice certification.

- (a) *Staff review.*
- (1) No application for an action required by this chapter or chapter 12 to proceed through the public hearing process may be placed on a schedule to be heard by the hearing examiner until:
 - a. and b. *No change.*
- (2) No application for an action required by this chapter or chapter 12 may be scheduled for a public hearing before the Board of County Commissioners until after the hearing examiner has rendered a recommendation.
- (3) *No change.*

ARTICLE IV. PLANNED DEVELOPMENTS

DIVISION 1. GENERALLY

Sec. 34-341. Employment of planned development designation.

(a) The Lee Plan requires developments of county impact to be developed as planned developments. These developments of county impact, defined in subsection (b) of this section, if not already zoned for the use desired, must be rezoned only to the most applicable planned development category. Other proposed developments, regardless of size, may seek a planned development designation where the developer desires and the division director determines that it is in the public interest to do so. Development of private recreational facilities in the DR/GR land use category requires private recreational facility planned development (PRFPD) district zoning which must comply with the special regulations set forth in section 34-941 as well as the other requirements set forth in this article.

Development of a mining excavation requires mining excavation planned development (MEPD) district zoning, which must comply with the process and regulations set forth in chapter 12.

(b) The Lee Plan provides that certain owner-initiated rezonings and special exceptions meeting specified thresholds will be reviewed as developments of county impact. The development of county impact thresholds are further categorized as major or minor planned developments as follows:

(1) *Major planned developments.*

a. through d. No change.

e. Mining activities any request for a mining excavation;

No change to the balance of this section.

DIVISION 2. APPLICATION AND PROCEDURE FOR APPROVAL

Sec. 34-372. Preapplication conference.

The applicant may initiate the planned development process by requesting an optional preapplication conference with the department staff. In this request, the applicant shall provide a description of the property in question, the location of the property, the existing use, special features and the use proposed. Through this meeting, the applicant may avail himself of staff in order to be oriented to the planned development process, to determine what application materials are required (if a minor planned development), and to be advised of the impacts of the Lee Plan, surrounding development and zoning, and other public policy on the development proposal.

A mandatory preapplication conference is required in accord with 12-108 for mine excavation planned development applications.

Sec. 34-373. Application.

(a) *Minimum required information for all planned development zoning applications.* Rezoning applications for all planned developments, with the sole exception of mine except excavation planned developments (MEPD) under chapter 12, must include the following information, supplemented, where necessary, with written material, maps, plans, or diagrams. A MEPD application must be submitted in accord with section 12-110 and is subject to the sufficiency timing provisions outlined in section 34-272(d).

Wherever this section calls for the exact or specific location of anything on a map or plan, the location must be indicated by dimensions from an acceptable reference point, survey marker or monument.

No change to the balance of this section

Sec. 34-381. Duration of rights conferred by adopted master concept plan.

(a) *Duration of rights for all planned development with the exception of Mining excavations:*

(1) and (2) *No change.*

(b) For duration of rights or approvals issued for Mining excavation existing as of September 1, 2008, refer to sections 12-109 and 12-121.

(~~b~~ c) *Zoning status of vacated master concept plans.* When any portion of a master concept plan is vacated pursuant to section 34-381(a), the vacated area of the master concept plan will remain zoned planned development, but no additional development can occur or be approved until a new master concept plan is approved in compliance with section 34-373 et. seq.; the original master concept plan is reinstated; or the property is rezoned by the Board of County Commissioners.

An extension or reinstatement may not add new uses or increase density or intensity of the master concept plan. The BOCC may, however, remove uses or decrease the density or intensity of the master concept plan. A master concept plan with new uses or increased density or intensity must be reviewed in accordance with section 34-373 et. seq.

(~~e~~ d) *Extensions of Master Concept Plans.*

(1) and (2) *No change.*

(~~d~~ e) *Reinstatement of Master Concept Plans.*

(1) through (3) *No change.*

(ef) *Vacated Master Concept plans that have not been extended or reinstated.* No development is allowed within a planned development zoning district, if the master concept plan has been vacated, until a master concept plan has been approved in accordance with this code.

DIVISION 3. DESIGN STANDARDS

Sec. 34-414. Open space.

(a) For the purpose of calculating requirements for planned developments, the term "open space" shall be is defined as follows:

- (1) Open space has the meaning given such term in chapter 10.
- (2) Common open space means open space ~~which~~ that is physically accessible to all residents of the development.
- (3) Private open space means open space ~~which~~ that is physically separated from the common open space and is accessible primarily from a building or unit to which it is appurtenant.

(b) Open space should be reasonably accessible to all dwelling units.

(c) Each lot, tract or outparcel shall must meet or exceed the minimum open space percentage and size requirements of chapter 10. The minimum amount of open space for the total development area shall may be no less than the minimum percentage required in chapter 10 for large projects, including indigenous vegetation preservation. A request may be made to assign minimum open space percentages to individual lots, tracts or outparcels ~~which~~ that are different than those required by the chapter 10, provided that:

- (1) The sum of open space allocated to the individual lots, tracts, or outparcels shall may be no less than the minimum percentage required in chapter 10 for the entire development area, including indigenous vegetation preservation.
- (2) An open space table shall must be inserted as part of the master concept plan ~~which or mine site plan set that~~ indicates the minimum amount of open space which each lot, tract or outparcel shall will provide.
- (3) Open space areas shall must meet at a minimum the dimensional size requirements for open space as set forth for small or large projects, as applicable, in chapter 10.
- (4) No lot, tract or outparcel shall may provide less than ten percent open space.

All such requests must be approved by the Board of County Commissioners as part of the planned development rezoning.

(d) Unimproved open space, e.g., reserved conservation or preservation areas such as wetlands (see the county comprehensive plan adopted by Ordinance No. 89-02, as amended, or as further amended, renumbered or replaced), must be committed at the completion of the first phase.

(e) With respect to design standards applicable to mine excavation planned developments, the standards set forth in chapter 12 control.

ARTICLE VI. DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 34-611. Districts established.

In order to classify, regulate and restrict the location of buildings erected or structurally altered for specific uses, to regulate the use of land, to regulate and limit the height and bulk of buildings hereafter erected or structurally altered, to regulate and determine the area of yards and other open space about buildings, to regulate the intensity of land use and to promote the orderly growth of the county, in compliance with the goals, objectives and policies set forth in the Lee Plan, the unincorporated area is divided into zoning districts as set forth in this article and chapter 12.

DIVISION 2. AGRICULTURAL DISTRICTS

Sec. 34-653. Use regulations table.

Use regulations for agricultural districts are as follows:

TABLE 34-653. USE REGULATIONS FOR AGRICULTURAL DISTRICTS

	<i>Special Notes or Regulations</i>	AG-1	AG-2	AG-3
Excavation:				
Oil or gas	34-1651	SE	SE	SE
Water retention	34-1651, 10-329(c)	P	P	P
Mining	34-1651, 34-1671 et seq. Note (24)	EØ	EØ	EØ

Notes:

(24) The rights applicable to mining excavations approved prior to September 1, 2008, are set forth in section 12-121.

Balance of the table remains unchanged

DIVISION 8. INDUSTRIAL DISTRICTS

Sec. 34-903. Use regulations table.

Use regulations for industrial districts are as follows:

TABLE 34-903. USE REGULATIONS FOR INDUSTRIAL DISTRICTS

	<i>Special Notes or Regulations</i>	<i>IL Note (14)</i>	<i>IG Note (14)</i>	<i>IR Note (14)</i>
Excavation				
Mining	34-1671 et seq	--	--	--
Water retention	34-1651	P	P	P
Oil or gas		SE	SE	SE

Balance of table remains unchanged.

DIVISION 9. PLANNED DEVELOPMENT DISTRICTS

Sec. 34-931. Purpose and intent.

(a) **Generally.** The general purpose and intent of the various planned development districts is set forth in section 34-612(2). The purpose and intent of specific planned development districts is set forth in subsections (b) through (i j) of this section.

(b) through (i) *No change.*

(j) Mine excavation planned development (MEPD) district. The MEPD district is intended to accommodate and regulate mining activities and to provide specific land development regulations that allow resource extraction activity consistent with the provisions set forth in chapter 12.

Sec. 34-932. Regulation of land use in planned developments.

(a) All uses of land, water and structures permitted in a planned development ~~shall be~~ are subject to the general requirements for planned developments, an adopted master concept plan and various special conditions, as required. Provided, however, mine excavation planned developments are subject to chapter 12, the adopted MEPD resolution, special conditions and the approved engineered mine site plan set.

(b) Special conditions may be formulated and applied to address unique aspects of the parcel in the protection of a bona fide public interest. The source of such restrictions

may include good planning practice as well as those specifications set forth in the application documents, policy and standards set forth in the Lee Plan.

(c) All special conditions ~~shall~~ must be reasonably related to the proposed development and to any reasonably expected impacts on public services and facilities and the public safety, health and general welfare. Such special conditions should be pertinent to the mitigation of these impacts. All conditions ~~shall~~ must be adopted as part of the zoning resolution and as an appendix to the approved master concept plan ~~which~~ or engineered mine site plan set that governs the planned development.

(d) The standards for use and development of a planned development ~~shall will~~ be set forth in the ~~documentation attached to the master concept plan~~ zoning or MEPD resolution and its attachments, and, unless modified through the schedule of deviations, where applicable (see section 34-412), such standards ~~shall may~~ not be less restrictive than the minimum standards set forth elsewhere in this chapter, chapter 12, or other applicable development regulations.

(e) Areas devoted to various uses ~~shall~~ must be designated on the concept plan or mine site plan set. The application for a planned development ~~shall~~ must include a schedule detailing the uses desired, identifying such uses by citing the enumerated uses of one or more conventional zoning districts, use activity groups (section 34-622), and defined uses (section 34-2).

Sec. 34-933. Permitted uses.

Except in the MEPD and PRFPD districts, or where otherwise specifically indicated to the contrary, the uses listed in section 34-934, pertaining to use regulations for planned development districts, may be permitted in the indicated districts when consistent with the goals, objectives and policies of the Lee Plan for the land use category in which the property is located, and when approved on the enumerated documentation of the master concept plan. Uses that are not specifically listed in section 34-934 may also be permitted if, in the opinion of the director, they are substantially similar to a listed permitted use.

In the MEPD and PRFPD districts, only those uses specifically listed in section 34-941 may be approved on the master concept plan.

Sec. 34-934. Use regulations table.

Use regulations for planned development districts are as follows:

TABLE 34-934. USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS

	<i>Special Notes or Regulations</i>	<i>RPD</i>	<i>MHPD</i>	<i>RVPD</i>	<i>CFPD</i>	<i>CPD</i>	<i>IPD Note (37)</i>	<i>AOPD</i>	<i>MPD</i>	<u><i>MEPD</i></u>
Excavation Mining	34-1651, 34-1671 et seq (44) <u>12-101 et. seq.</u>	P	P	P	P	P	P	--	P	<u>P</u>
Water retention Oil or gas	34-1651 34-1651	P P(4)	P P(4)	P P	P P	P P	P P	P --	P P	<u>P</u> <u>P</u>
<u>Mining</u> <u>Accessory Uses</u>	<u>12-101 et eq.</u>	=	=	=	=	=	=	=	=	<u>P</u>

No changes to balance of table.

(44) The rights applicable to mining excavations approved prior to September 1, 2008, are set forth in section 12-121.

Sec. 34-935. Property development regulations.

The provisions of this section do not apply to PRFPDs. Property development regulations for PRFPDs are set forth in section 34-941.

(a) *Minimum area for planned developments.*

(1) *No change.*

(2) *Other planned developments.* Minimum area and dimensions are not specified for other planned developments. However, the net developable land remaining, after deleting any environmentally sensitive lands and waters, must be of such size, configuration and dimension as to adequately accommodate the proposed structures, parking, access, on-site utilities, including wet or dry runoff retention, all required open space, including buffers, and similar spatial requirements.

(b) *Minimum setbacks of structures and buildings from development perimeter boundaries.*

(1) All buildings and structures must be set back from the development perimeter a distance equal to the greater of:

a. through g. *No change.*

h. Setbacks applicable in MEPD districts are as provided in chapter 12.

(2) through (5) *No change.*

(c) through (f) *No change.*

(g) *Open space.* See section 34-414(a) for definitions pertaining to open space.

(1) through (5) *No change.*

(6) In the MEPD district open space must be provided in accord with chapter 12.

ARTICLE. VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 15. EXCAVATION ACTIVITIES

Subdivision I. Generally

Sec. 34-1651. General requirements for all excavation activities.

(a) *Certificate to dig.* A certificate to dig must be obtained prior to receiving approval to excavate properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to chapter 22.

(b) *Mining.* Mining (def) activities may be permitted in accordance with section ~~34-1671 et seq~~ chapter 12.

(c) Driving or sinking of wells for purpose of oil or gas exploration or extraction.

(1) No oil or gas exploration wells or test wells may be commenced prior to obtaining a special exception for gas and oil exploration in accordance with the procedures set forth in article II of this chapter.

(2) No oil or gas exploration wells may be used for or converted to production wells prior to obtaining a special exception for gas and oil extraction in accordance with the procedures set forth in article II of this chapter

(d) Excavations for purpose of water retention or other land development. No excavation activities, including removal of surplus material may be commenced prior to receiving approval in accordance with the provisions of section 10-329 or chapter 12, as applicable.

~~Subdivision II. Mining~~*

~~Sec. 34-1671. Purpose of subdivision:~~

~~Mining operations, by their very nature, are incompatible with most other uses. However, the Lee Plan acknowledges that mining is a valuable natural resource. This subdivision establishes the general requirements for mining activities and sets forth the procedures, requirements and regulations pertaining to application for approval of mining activities.~~

~~Sec. 34-1672. Compatibility:~~

~~Mining operations must address compatibility concerns during the rezoning process. These compatibility concerns include, but are not limited to: blasting activities, dewatering, the creation of noise and dust, vibrations associated with blasting and crushing operations, impacts from associated intensive industrial operations including, but not limited to, cement and asphalt batch plants, cement product plants, and significant truck traffic.~~

~~Sec. 34-1673. Permit required:~~

~~It is unlawful for any person to commence mining activities within the unincorporated area of the county, or for an owner to allow the conduct of mining activities on his property, without first obtaining a general mining permit and a mining operation permit. All permits required by this section must be posted at the mining site. Any violation of mining permit conditions, including zoning or development order terms or conditions, may result in the issuance of a cease and desist order to stop all operations until corrected. Failure to comply with a cease and desist order will result in penalties as described in section 1-5 of this code.~~

~~Sec. 34-1674. General policies for approval and operation:~~

~~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 groundwater resource areas must be designed to minimize the possibility of contamination of the groundwater during mining activity and after completion of the reclamation.~~

~~(2) Mining operations must meet or exceed local, state and federal standards for noise, air and 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:~~

~~(4) Mining activities, and industrial uses ancillary to mining activities, must:~~

~~a. Have adequate fire protection, transportation facilities, wastewater treatment and water supply; and~~

~~b. Have no significant adverse effects such as dust, glare, light trespass and noise on surrounding land uses and natural resources.~~

~~Sec. 34-1675. Application for a general mining permit; issuance of permit:~~

~~(a) General procedure.~~

~~(1) New general mining permits may only be approved by the Board of County Commissioners as a planned development or as part of a planned development.~~

~~(2) A general mining permit may be issued with conditions if necessary to protect the public health, safety and welfare or to ensure compliance with the plan or other applicable regulations. A mining operation permit is also required prior to any activity on the site (see section 34-1676).~~

~~(b) Application for public hearing. In addition to the public hearing requirements~~

set forth in articles II and IV for planned developments, all applications for a mining permit must include the following information:

- (1) ~~Names, addresses and telephone numbers of:~~
 - a. ~~The owner of the property and its agents located in the county upon whom general notices and notices of violation under this chapter may be made.~~
 - b. ~~The applicant or operator, if other than the owner, and its agent residing in the county upon whom general notices and notices of violation under this chapter may be made. The application must state the applicant's legal interest in the lands comprising the project tract.~~
 - c. ~~The Florida registered professional engineer of record for the project, who has prepared and signed all engineering documents submitted to the county.~~

- (2) ~~Historical and archaeological data. Information on whether the property:~~
 - a. ~~Is located within a Level 1 or Level 2 zone of archaeological sensitivity pursuant to the survey titled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida," or~~
 - b. ~~Contains an archaeological site that is listed on the Florida Master Site File.~~

~~If either is the case, a certificate to dig, pursuant to chapter 22, will be required prior to issuance of a mining operation permit.~~

- (3) ~~Environmental assessment report. An environmental assessment report including consideration of:~~
 - a. ~~Existing conditions of the site, including Florida Land Use and Cover and Classification System (FLUGCS) mapping, wetland boundary delineation and general locations of existing native trees;~~
 - b. ~~Impact on environmental, historical and natural resources, including but not limited to wetlands, natural flowway corridors, sloughs, creeks, ponds and lakes, and native plant communities and native trees;~~
 - c. ~~A protected species survey as required by section 10-471 et seq.;~~
 - d. ~~Effect on nearby land uses;~~

- e. ~~Degradation or depletion of water quality and quantity;~~
- f. ~~Drainage;~~
- g. ~~Fire and safety;~~
- h. ~~Noise, odor, visual impacts;~~
- i. ~~Air emissions; and~~
- j. ~~Sewage disposal and solid waste disposal.~~

~~(4) *Traffic impact statement.* In lieu of the traffic impact statement required by section 34-373(a)(7), the following information must be submitted:~~

- a. ~~Projected yearly volume and the total amount of excavated material to be removed from the site;~~
- b. ~~Projected number of peak hour and annual average daily truck trips;~~
- c. ~~Ownership, condition and maintenance plans for access routes from the actual excavation to the nearest county-maintained road; and~~
- d. ~~Projected distribution of truck trips on the county and state road network.~~

~~(5) *Test boring data.* Data from test borings conducted on each proposed excavation site at intervals determined by the division of natural resources. Information submitted must include the:~~

- a. ~~Locations of the test borings;~~
- b. ~~Nature and depth of overburden;~~
- c. ~~Likely yield of extractive material;~~
- d. ~~Complete chemical characteristics of water in each water-bearing strata to be penetrated; and~~
- e. ~~Groundwater levels.~~

~~After evaluation by the division of natural resources, the test borings must be plugged from bottom to top with cement under the supervision of that division.~~

~~(6) Site map. Drawn at the same scale as the master concept plan, prepared and certified by a registered engineer or surveyor showing:~~

- ~~a. The date prepared and any revision dates;~~
- ~~b. A north directional arrow;~~
- ~~c. The names and locations of all streams, creeks, sloughs, natural flow-ways, wetlands, water bodies, private or public owned conservation lands, percolation ponds and drainfields, roads, railroads, utility lines, buildings, cemeteries and easements within the subject property and within 1000 feet of the property line; and~~
- ~~d. Location of test borings.~~

~~The certification on the map must state: "I, the undersigned, hereby certify that this map is correct, and shows the information required by the requirements of the Land Development Code to obtain a general mining permit."~~

~~(7) Proposed mining plan:~~

- ~~a. A site plan, drawn to scale, showing:
 - ~~1. The proposed area to be excavated, as follows:
 - ~~i. Projects anticipated to be completed within ten years must show areas to be excavated in two-year increments; and~~
 - ~~ii. Long duration projects (ten or more years) with projected annual production in excess of 500,000 cubic yards must show areas to be excavated in ten-year increments.~~~~
 - ~~2. The general location and description of all physical plant facilities or other facilities for the operation.~~
 - ~~3. Location and description of all existing and proposed monitoring wells.~~
 - ~~4. Location and description of all vehicle access routes, to the nearest county-maintained road.~~
 - ~~5. Location of all conservation and preservation areas, streams;~~~~

creeks, sloughs, flow-ways, and cypress heads (domes) and the location of connection to adjacent conservation or preserve areas:

- b. ~~A profile plan showing the proposed depth of excavation and slope of banks during excavation operations and after reclamation.~~
- c. ~~A description of the excavation operation, including a description of methods to be employed in removing extractive materials from the ground and from the premises. If blasting is to be used, the type of blasting material as well as the frequency and hours of blasting contemplated. See section 34-202(b)(6) for other required information.~~
- d. ~~*Hours of Operation:*~~
 - 1. ~~The proposed hours for office operations and business transactions and the hours that trucks will enter and leave the site with excavated materials. No blasting, excavation or trucking operations may be conducted on Sunday.~~
 - 2. ~~The proposed hours for excavation operations (i.e. dragline operations and blasting activities) and rock crushing operations.~~
- e. ~~Whether the rock crushing operations, if requested, will be conducted within a fully enclosed building.~~
- f. ~~Whether dewatering is a requested activity. If dewatering is proposed the applicant must provide assurances that there will be no adverse impacts to existing wellfields, nearby properties, or wetlands adjacent to the excavation operation associated with withdrawals from the project.~~
- g. ~~Whether the use of Stone, Clay, Glass, and Concrete Products Manufacturing, Group III (concrete block and brick), if requested, will be conducted entirely within an enclosed building.~~
- h. ~~A pre-development groundwater and surface water analysis must be conducted and submitted for approval. This analysis is intended to establish baseline data for groundwater and surface water monitoring for the mining project area. The analysis must be designed to identify groundwater level and groundwater and surface water quality baseline data. Prior to commencing the baseline study, the methodology of the study must be submitted for review, comment, and approval by the county.~~

- ~~1. Where dewatering is proposed as part of a mining operation, the following information must be provided:~~
 - ~~1. Detailed description of the dewatering method and procedure to be used to facilitate the excavation.~~
 - ~~2. Estimated volumes of water to be extracted, impounded or diverted per hour and per day for the duration of the dewatering.~~
 - ~~3. A map specifically depicting the location of all dewatering pumps and withdrawal points.~~
 - ~~4. A plan/map showing the disposition of the dewatered effluent, whether on or off the development site. The map must depict the size and location of the proposed holding ponds or trenches as well as the calculations used to determine the size of the proposed holding ponds and trenches. A soils report must be included that documents the ability of the sub-surface soils, in the subject location, to percolate the dewatered effluent. If an off-site location is proposed, then the application must include permission from each property owner whose property will be traversed or used to accomplish the dewatering as proposed. This permission/consent must be in writing, signed by the property owner and acknowledged before a notary. Consents signed by an agent of the property owner will not satisfy this requirement.~~
 - ~~5. Engineering estimates of the monthly water balance for the projected highest, lowest and average rainfall sequence for the operation life of the excavation. This estimate must account for all sources of water input to the water recirculation facilities and processing steps, and all water outputs and losses from the system. The submittal must also include a detailed explanation of the computation methods and assumptions used to derive the estimate.~~
 - ~~6. Engineering estimates demonstrating that the proposed dewatering will not adversely impact adjacent wetlands and groundwater resource aquifer supply must be submitted if the excavation will extend below the normal wet season groundwater elevation.~~

7. ~~A proposed groundwater level monitoring plan that specifies the location of all wells comprising the monitoring well network. The proposed water level monitoring plan and process must be sufficient to document changes that are a result of the proposed dewatering with respect to groundwater levels and groundwater flow directions on and/or off the subject project site.~~
- j. ~~A copy of the SFWMD Water Use Permit (WUP) application for dewatering, including the support documentation.~~
- k. ~~A copy of the SFWMD WUP staff report/recommendation and WUP permit approval when and if issued.~~
- (8) ~~*Rehabilitation and reclamation plan.* Plans and other appropriate documents accurately depicting the plan of reclamation, consistent with the standards detailed in section 34-1681, for each increment of the mining plan as outlined in the proposed mining plan submitted pursuant to subsection (b)(7)a.1. of this section. The plans must include:~~
- a. ~~A typical section indicating the steepness of side slopes and depth of excavation and separate section of the littoral shelf of the excavation;~~
- b. ~~Proposed elevations and final grading plan;~~
- c. ~~A statement that reclamation will begin within 30 calendar days after completion in any phase that will not be disturbed by future operations; and will be completed within 12 months or whenever the permitted operations have been completed or the general excavation permit expires, whichever comes first; and~~
- d. ~~An estimated cost for the reclamation program for each increment of the mining plan, including breakdowns for the cost of grading, grass stabilization, littoral shelf creation, any plant installation and monitoring, resloping of the lake banks and any other work required to complete the reclamation of the area.~~
- (9) ~~*Other permits:*~~
- a. ~~Copies of all local, water management district, state and federal permits issued for the project, or any applications for pending permits;~~
- b. ~~A summary listing of all required project permits by agency, identification number, date of issuance and date of expiration.~~

Sec. 34-1676. Application for a mining operation permit.

(a) Upon approval of the general mining permit, the applicant may file for a mining operation permit. The development services staff will issue a mining operation permit after reviewing the application for compliance with the conditions placed on the general mining permit.

(b) In addition to the submittal requirements of set forth in section 10-175, the applicant must submit the following information:

(1) A list of the conditions placed on the mining operation by the Board of County Commissioners for the approved phase, as well as specific proposals to comply with the conditions:

(2) A performance bond, cash in escrow or letter of credit in an amount to be determined by the director but not less than 110 percent of the amount calculated pursuant to subsection 34-1675(b)(8)d, or other agreement acceptable to the county attorney to ensure the applicant's compliance in all respects with the conditions of the general mining permit for the phase or portion thereof covered by the mining operation permit.

(3) A survey of the area and depth of the excavation site certified by a professional surveyor and mapper (PSM) as part of each renewal application for a mining operation permit.

(c) All on-site or off-site improvements required or imposed as a condition of zoning or development order approval must be completed and issued a certificate of compliance in accordance with the provisions contained in section 10-183 prior to commencement of mining activities and off site distribution of mining materials for the phase where the improvements are required.

Sec. 34-1677. Duration of mining operation permit.

(a) Mining operation permits for the area or phase approved in the general mining permit will be valid for two years from the date of issuance unless a lesser period of time has been stipulated by the Board of County Commissioners.
Applications for renewal must be made at least 90 days prior to expiration.

(b) Long duration projects, described in section 34-1675(b)(7)a.1.ii, will be valid for five years from the date of permit issuance unless a lesser time has been stipulated by the Board of County Commissioners.

(c) The Board of County Commissioners may issue a general mining permit for all increments of long duration projects after the public hearings required by article II of this chapter.

Sec. 34-1678. ~~Renewal of permits:~~

~~(a) — An application to renew a mining operation permit renewal must contain the same information required in section 34-1676, updated to reflect current conditions. Other information, sufficient to demonstrate compliance with the conditions of the original approval, must be submitted upon request by the development services division.~~

~~(b) — Renewal of mining operation permits may be issued by the director after analysis of relevant information and a determination of compliance with the provisions of:~~

- ~~(1) — The original mining operation permit approval, including any conditions placed on the general mining permit by the Board of County Commissioners; and~~
- ~~(2) — The reclamation plan.~~

~~(c) — Renewal permits will be valid for two years or until the expiration date of the general mining permit, whichever occurs first. Renewal permits for long duration projects, that qualify under section 34-1675(b)(7)a.1.ii will be valid for five years or until the expiration date of the general mining permit, whichever occurs first. Renewal permits will be subject to the procedural standards and requirements of this subdivision including, but not limited to, reporting requirements and maintenance of a Pollution Prevention Plan.~~

~~(d) — Mining operation permits may be modified by making application to the director stating the reason for the modification and providing necessary documentation for the change.~~

Sec. 34-1679. ~~Additional phase approvals:~~

~~If a project subject to this subdivision has not received a general mining operation permit for each increment shown in accordance with section 34-1675(b)(7)a.1.ii, the developer must submit a detailed mining plan and reclamation plan in accordance with the procedures for a minor planned development prior to obtaining the mining operation permit for the next increment.~~

Sec. 34-1680. ~~Inspections:~~

~~The county's designated representatives have the right to enter mining sites at all reasonable hours, whenever entry is necessary for the proper discharge of their duties under this subdivision.~~

Sec. 34-1681. ~~Site requirements:~~

~~(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.

~~(1) General Provisions:~~

- ~~a. All uses permitted under this subdivision must have a minimum lot size of ten acres:~~
- ~~b. 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:~~
- ~~c. Mining operations must be located, designed and operated to:
 - ~~1. Be compatible with surrounding private and publicly owned lands with special consideration given to surrounding conservation owned lands; and~~
 - ~~2. Avoid adverse effects to existing surrounding agricultural, residential or conservation activities; and~~
 - ~~3. Avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources; and~~
 - ~~4. Comply with the outdoor lighting provisions (except fixture mounting height standards) of this Code; and~~
 - ~~5. Not degrade the ambient surface or groundwater levels and quality:~~~~

~~(2) Setbacks for excavation site.~~

- ~~a. Excavations are prohibited within:
 - ~~1. One hundred fifty feet of an existing street right-of-way line or easement;~~
 - ~~2. One hundred feet of any private property line under separate ownership.~~In all cases, the most restrictive setback will apply.~~
- ~~b. A 500' radial setback is required from existing well sites for mining operations approved after June 24, 2003.~~

c. ~~The Board of County Commissioners may allow reduced setbacks in the context of a planned development approval provided:~~

1. ~~The reclamation plan indicates how access will be made to future development;~~

2. ~~The reclamation plan indicates that the setback area will not be developed after restoration; or~~

3. ~~Closer setback will not be injurious to other property owners and the mining owner or operator agrees to fence the mining site nearest private property under separate ownership if deemed necessary by the Board of County Commissioners.~~

(3) ~~Setbacks for accessory buildings or structures:~~

a. ~~Setbacks for accessory buildings or structures must be shown on the site plan for a general mining permit and a mining operation permit.~~

b. ~~No crusher, mixing plant, bin, tank or structure directly involved in the production process may be located less than:~~

1. ~~660 feet from any residentially zoned property or use under separate ownership; or~~

2. ~~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 in this subsection listed as criteria for the final placement of these buildings, structures or facilities.~~

(4) ~~Security. All entrances to mining activity areas must be restricted from public access during working hours and locked at all other times.~~

(5) ~~Observation wells. The South Florida Water Management District Water Use permit requirements must be satisfied.~~

(6) ~~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 or 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.

~~(7) — *Penalty for excessive depth.* If the excavation exceeds the established maximum excavation depth, the operator of the mining operation together with the property owner will be liable for a fine of \$2.00 per cubic yard (in-situ measure) for each cubic yard of material excavated beyond the maximum excavation depth. This penalty may not exceed those provided for in F.S. Chapter 162.~~

~~(8) — *Bank slope.*~~

- ~~a. — After excavation is complete and upon reclamation of the site, the banks of the excavations must be sloped at a ratio not greater than 6 horizontal to 1 vertical from the top of the finished grade to a water depth of four feet below the dry season depth. The excavation banks must also have a revegetated linear edge of at least 150 feet along the perimeter when abutting a residentially zoned area or district; or~~
- ~~b. — The bank may be sloped a minimum of 4 horizontal to 1 vertical to four feet below the dry season water table if planted with suitable native wetland vegetation according to a plan approved by the Board of County Commissioners. Requests for 4 to 1 slopes must be included in the schedule of deviations (see section 34-412).~~

~~(b) — *Performance Standards.* Mining operations will be subject to the following performance 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:~~

- ~~(1) — The Mining Operation must provide paved access connections to the County's road network. Paved access connections must:~~
 - ~~a. — Satisfy the minimum street construction standards for industrial development specified in this code; and~~
 - ~~b. — Be constructed to a minimum depth of 300 feet on the mine property.~~
- ~~(2) — The use of a truck/tire wash system is mandatory for all projects where the paved access connection is less than 0.5 (one-half) mile in length. The truck/tire wash must:~~
 - ~~a. — Be installed on the property with a minimum setback of 100 feet from the project boundary; and~~
 - ~~b. — Be located on the paved access connection at least 100 feet from the interior terminus of the paved access connection.~~

~~(3) — The operator of the mining operation or the property owner must prepare and keep on-site a Pollution Prevention Plan. 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. The operator must submit a copy of the Pollution Prevention Plan when applying for the Mining Operations Permit.~~

~~(4) — The operator of the mining operation together with the property owner must provide a report every two years that provides:~~

~~a. — Copies of periodic surface, groundwater levels and quality monitoring requirements, at intervals directed by the director of natural resources or as conditioned in the zoning approval, pertaining to the baseline levels identified in the approved pre-development analysis (required by section 34-1675(b)(7)h and those anticipated for use in conjunction with the proposed mining project; and~~

~~b. — Signed and sealed surveys that provide the depth of the existing excavation.~~

~~This report must be submitted to the Department of Community Development every two years beginning on the second anniversary of the date that the mining operation received the first local development order to commence the mining operation. A report must be submitted every two years until the reclamation of the mining operation is complete.~~

~~(5) — Damage directly attributable to this mining operation to the improved or unimproved roadways must be repaired by the holder of the excavation/mining operation permit.~~

~~(6) — Contractors, sub-contractors, laborers, material men, and their employees using, handling, storing, or producing regulated substances must use applicable best management practices.~~

~~(c) — *Reclamation Standards.* Mining operations will be subject to the following reclamation 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. These conditions are not intended to conflict with the wetland permitting requirements of the U.S. Army Corps of Engineers, Florida Department of Environmental Protection or South Florida Water Management District. If differences exist, adjustments necessary to resolve the conflicts are acceptable for review.~~

- ~~(1) All disturbed areas of the mine site including the top of lake banks must be stabilized with native plants, sod or grass seeding at completion of mining or completion of each mining phase.~~
- ~~(2) Reclamation must be completed along the perimeter of the excavation. A minimum of 25 percent of the post construction lake (mine) perimeter length is required to have planted littoral shelves. The littoral shelf must be a creative design to improve water quality and create wildlife habitat. The littoral shelf must be a minimum of 10 feet wide. This minimum mine reclamation is required and should be planned to compliment post mine uses. The littoral shelf may be used as wetland impact mitigation as required by federal, state or water management district permits.~~
- ~~(3) Littoral plants must meet the standards of LDC Section 10-418. Trees smaller than those specified in section 10-420 may be used at equivalent value ratios to required herbaceous plants.~~
- ~~(4) The littoral shelf must be protected from impacts during and after mining. If the agricultural use of livestock is the intended post mine use, adequate fencing must be installed to protect the littoral shelf from livestock damage.~~
- ~~(5) If appropriate, organic soils (muck) must be excavated from any impacted wetlands on the site and placed in the littoral shelf creation areas.~~

ARTICLE VIII. NONCONFORMITIES

DIVISION 1. GENERALLY.

Sec. 34-3205. Uses approved by special exception or permit.

(a) Uses approved by special exception or other permits which were issued or granted by the Board of County Commissioners before the effective date of the ordinance from which this chapter is derived, and which are no longer permitted in the zoning district where located, shall be considered to be nonconforming uses and subject to the provisions of this article.

(b) For existing Mining excavations approved by Special Exception, the provisions of section 12-121 control.

SECTION FOUR: CREATION OF APPENDIX O

The Lee County Land Development Code Appendix is hereby amended to add Appendix O, titled Chemical Constituent list and to add Table 1 , attached to this ordinance as Exhibit 1.

SECTION FIVE: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION SIX: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION SEVEN: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION EIGHT: EFFECTIVE DATE

The ordinance will take effect on September 10, 2008.

Commissioner Janes made a motion to adopt the foregoing ordinance, seconded by Commissioner Mann. The vote was as follows:

Robert P. Janes	<u>Aye</u>
Brian Bigelow	<u>Aye</u>
Ray Judah	<u>Aye</u>
Tammara Hall	<u>Aye</u>
Frank Mann	<u>Aye</u>

DULY PASSED AND DATED THIS 9th DAY OF SEPTEMBER, 2008.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: Marcia Wilson
Deputy Clerk

By: Ray Judah
Ray Judah, Chairman



APPROVED AS TO FORM:

By: Dawn E. Perry-Lehnert
Dawn E. Perry-Lehnert
Office of County Attorney

Exhibit 1: Appendix O Chemical Constituent list

Table 1 - Chemical Constituent List

Mining Monitoring Parameters	MDL	Units	Surface Water	Ground Water
Chlorophyll a, corrected for Pheophytin	0.5	mg/M3	X	
Pheophytin	0.5	mg/M3	X	
Biochemical Oxygen Demand, 5 day (BOD5)	0.3	mg/L	X	
Cadmium	0.3	µg/L	X	
Chloride	1.2	mg/L	X	X
Color	1.5	CU	X	
Specific Conductance, 25oC	1	µmhos/cm	X	
Copper	1.0	µg/L	X	
Oxygen, Dissolved	0.1	mg/L	X	
Enterococci	10	colonies/100mL	X	
Fecal coliform	10	colonies/100mL	X	
Ammonia	0.014	mg/L as N	X	
Nitrite	0.002	mg/L as N	X	
Nitrate	0.01	mg/L as N	X	
Nitrate + Nitrite (NOX)	0.01	mg/L as N	X	
Phosphorus, Ortho	0.004	mg/L as P	X	
Lead	1.0	µg/L	X	
pH, Field (electrometric)	0.1	units	X	
Silica	0.05	mg/L as SiO2	X	
Phosphorus, Total	0.01	mg/L as P	X	
Field Temperature		°C	X	
Nitrogen, Kjeldahl, Total (TKN)	0.05	mg/L as N	X	
Nitrogen, Total	0.11	mg/L as N	X	
Total Suspended Solids	0.6	mg/L	X	
Turbidity	0.2	NTU	X	
Zinc	0.005	mg/L	X	
Stage		Feet NVGD	X	
Zinc	0.005	mg/L	X	
Sulfate	1	mg/L		X
Total Dissolved Solids (TDS)	6	mg/L		X
Iron	0.04	mg/L		X
Florida PRO	0.05	mg/L	X	X
Water Table Elevation		Feet NVGD		X
Total Organic Carbon (TOC)	0.5	mg/L	X	X



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

September 16, 2008

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Ms. Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated September 11, 2008 and certified copies of Lee County Ordinance Nos. 08-21, which was filed in this office on September 12, 2008.

Sincerely,

Liz Cloud
Program Administrator

LC/srd

RECEIVED
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08 SEP 19 PM 2:04

DIRECTOR'S OFFICE

R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
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