

**LEE COUNTY, FLORIDA
ZONING DIVISION
STAFF REPORT**

TYPE OF CASE: PLANNED DEVELOPMENT/DCI

CASE NUMBER: DCI2006-00007

HEARING EXAMINER DATE: November 8 & 9, 2006

I. APPLICATION SUMMARY:

- A. Applicant: Estero Group in ref to Estero Group IPD
- B. Request: Rezone 318± acres from Agricultural District (AG-2) to Industrial Planned Development (IPD) to allow the use of an Excavation, mining operation (specifically a fill dirt operation) on the subject property. Maximum excavation depth will be 40 feet. The proposed maximum building height is 40 feet with a dragline boom of 150 feet. Blasting will not be a part of this operation. The application indicates that dewatering will not be a part of this operation. A General Mining Permit is also requested as part of this application.
- C. Location: The subject property is located at 22951 Corkscrew Rd(Corkscrew Rd east past Alico Rd, property is on the north side of Corkscrew Rd., approximately 12 miles east of I-75), in S23-T46S-R27E, Lee County, FL. (District #5)
- D. Future Land Use Plan Designation, Current Zoning and Use of Subject Property and Road Classification: The subject property is designated as being in the Wetlands and Density Reduction/Groundwater Resource future land use categories according to the Lee Plan Future Land Use Map. The site is currently zoned AG-2 and is agricultural (cattle grazing) in use.
- E. Surrounding Land Use:
- | <u>Existing Zoning & Land Use</u> | <u>Future Land Use Map</u> |
|--|--|
| North: AG-2, agricultural | Density Reduction/Groundwater Resources and Wetlands |
| East: AG-2, agricultural | Density Reduction/Groundwater Resources |
| South: Corkscrew Road; then AG-2, agricultural | Density Reduction/Groundwater Resources and Wetlands |
| West: IPD, mining operation | Density Reduction/Groundwater Resources and Wetlands |

F. Size of Property: 318± acres

II. **RECOMMENDATION:**

Staff recommends APPROVAL of the Applicant's request for rezoning from Agricultural District (AG-2) to Industrial Planned Development (IPD) and a General Mining Permit with the following conditions and deviations:

A. Conditions:

1. The development of this project must be consistent with the five-page Master Concept Plan entitled "Estero Group IPD," stamped received August 4, 2006, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

The maximum length of this mining operation is ten years from the date of the original approval by the Lee County Board of County Commissioners. Any extension of this maximum length will be required to be approved as part of an amendment that would go through the public hearing process.

The hours of operation for this planned development are from 7:00 AM to 7:00 PM, Monday through Saturday for the fill pit operations. Trucks may not enter or leave the site except from 8:00 AM to 6:00 PM, Monday through Friday and from 8:00 AM to 12:00 PM (noon) on Saturday. The mining operation may not operate on any holiday observed by Lee County Government.

The applicant has committed as part of this application that the Excavation, mining use will NOT operate as a "Construction Materials Mining Operation" as defined in Chapter 552 of Florida Statutes, and will be used solely as a 'fill pit' operation, and is hereby conditioned to be limited as such. Therefore, given this self imposed limitation, no blasting is permitted as part of this planned development. In order for this site to be used as a Construction Materials Mining Operation, a public hearing amendment of this planned development must be approved to eliminate this condition of the zoning approval.

2. The following Limits apply to the project and uses:

- a. Schedule of Uses

Permitted Use:

Excavation, mining (limited solely to a fill pit operation, not Construction Materials Mining Operations as defined in Chapter 552 of Florida Statutes)

Accessory Uses:

Accessory Uses and Structures

Agricultural Uses - limited to the existing grazing operations (See Condition 24

Auto Repair and Maintenance - limited solely to the repair of vehicles and equipment associated to this mining operation

Caretakers residence - limited to one

Entrance gate and gatehouse

Essential Services

Essential Service Facilities, Group I

Fences, Walls

Heliport - emergency access only

Parking Lot: accessory

Signs, in conformance with Chapter 30 of the Land Development Code

Storage, open - limited solely to excavated materials and equipment directly related to the mining operation

Not approved as part of this planned development (either as a permitted or accessory use) is the use of "Manufacturing of: Stone, Clay and Glass products.

b. Site Development Regulations

Property Development Regulations

Excavation Setbacks:

Existing Right-of-way: 200 feet

Private Property Line: 200 feet

Excavation Depth/Slope:

Maximum Excavation Depth: The maximum permitted depth of this mining operation is 20 feet or to the confining layer, whichever occurs first (per FDEP permit). Drilling, trenching, or any other penetration of the earth beyond this depth is strictly prohibited.

Excavation Bank Slopes:

As provided for on the approved Master Concept Plan

Structure Setbacks:

Existing Right-of-way: 50 feet

Private Property Line: 50 feet

Maximum Height of Structures: 35 feet (150 feet for dragline)

3. Prior to local development order approval, the development order plans must
 - a. delineate 24.84 acres of existing indigenous plant communities and native tree areas as preservation in substantial compliance with the Master Concept Plan; and'
 - b. delineate a minimum 50-foot wide buffer along Corkscrew Road with a minimum of 50 native trees (minimum 10-foot height; 2-inch caliper) and 50 native midstory shrubs (minimum 48-inch height at planting; allowed to grow to their natural height and form) per 100 linear feet. Appropriate native trees include south Florida slash pine and live oak. Appropriate native shrubs include but are not limited to wax myrtle, dahoon holly, and myrsine. The use of native groundcover including but not limited to muhly grass and saw palm must be used to fill in the lower level of the buffer. These plantings must be mulched with pine straw.; and
 - c. details of a wildlife habitat restoration plan for the 200-foot wide perimeter setback along the east and north property lines, and the 150-foot north of the Corkscrew Road buffer. The restoration plan must include the use of minimum 3-gallon container size trees and minimum 1-gallon container size midstory and groundcover. The plantings must be mulched with pine straw.
4. Prior to local development order approval, the landscape and grading plans must include detailed cross-sections of the littoral shelves that demonstrate a minimum 100-foot width at a water depth appropriate for woodstork foraging and the inclusion of draw down pools (topsoiled 50:1 littoral zone to a maintained depth of -3.0 feet). The littoral shelves must be planted with appropriate native herbaceous vegetation providing fifty percent coverage at time of planting. A minimum of fifty percent of the shoreline must include this extended littoral shelf and the location of these littoral shelves delineated on the development order plans.
5. The applicant is encouraged to commence Early Consultation with the US Fish and Wildlife Service on the Florida Panther, and to include County staff in the consultation process.

Prior to local development order approval, a copy of the US Fish and Wildlife Service staff evaluation of the impact of the project on the Florida panther must be submitted. Any resulting Florida panther related permit requirements that are project commitments resulting from direct consultation with US Fish and Wildlife Service must also be submitted and will be incorporated as conditions of the local development order.
6. Prior to local development order approval, the three page document including title page entitled "Estero Group LTD, Reclamation Plan" dated December 1, 2005/March 10, 2006 and stamped received by Community Development May 15, 2006, and a one page 24 x 36 inch detail plan must be revised to meet the requirements of LDC Section 34-1675(a)(8) and to provide an enlarged littoral zone as described in environmental condition '4.' Page 2 of the "Estero Group LTD, Reclamation Plan" must be include a revision to the note stating "Site cleanup at completion of mining will consist of removing or adequately burying all debris, litter,

junk, equipment, or materials” to read “Site cleanup at completion of mining will consist of removing all debris, litter, junk, equipment, or materials from the property.”

7. Modify all perimeter site setbacks and wetland preserve buffers to a minimum of 200 feet. Submit planting plans for Lee County approval prior to mining.
8. As part of the Mining Operations Permit, the owner must provide monitoring wells around the perimeter of the site. The number of and location of these wells will be determined by the Division of Natural Resources as part of the Mining Operations Permit review.
9. The interconnection of this project with the mining operation to the west is not approved as part of this planned development. In order to achieve this interconnection, both planned developments must be amended through the public hearing process, and the applications must be heard on the same date to permit analysis of the impacts created by the proposed interconnection.
10. As part of the Mining Operation Permit, the mining operation will be required to provide an annual report to the Development Services Division that:
 - a. details the areas being mined
 - b. provides the quantity and type of material being extracted
 - c. provides the depth(s) of the existing excavation
 - d. provides a current aerial photograph of the mine
 - e. provides an estimate of the reserves to be excavated
 - f. provides all water levels and water quality monitoring data
 - g. wildlife monitoring data
11. As part of the restoration plan for the mining operation, the owner must design the plan to maximize the recharge potential for the underground aquifer.

Surface water levels during and at the completion of mining will maintain a seasonal high water level elevation of +28.5 ft. NGVD to sustain groundwater resources and adjacent wetlands hydrology, and may be revised based on site specific data reviewed and approved by the Division of Natural Resources staff. This elevation will be confirmed following three year of baseline data collection.

12. A groundwater monitoring plan must be approved as part of the Mining Operation Permit. This Plan must include an evaluation of the proposed and completed mine borrow pit impact by accurately evaluating the connectivity of the borrow pit and surface water bodies with the surficial potable aquifer. Any annual reports produced to address groundwater monitoring must be submitted to Natural Resources.

As part of this Plan:

- a. Establish the watershed and sub-basin boundaries for the project area. Establish a network of piezometers, staff gauges and a rainfall gauge to constantly record surface and shallow groundwater levels and precipitation. After a minimum period of one year this data will be used with the historical conditions and the MikeShe model to prepare a water budget analysis of the site established to determine normal and seasonal high water level

elevations within the mine excavation and adjacent wetlands. Monitoring will continue for the life of the mine.

- b. Baseline water quality monitoring protocols and stations will be followed by the applicant and approved by Lee County prior to the commencement of monitoring. The following parameters will be monitored for the purpose of improving water storage and quality: water nutrients and water chemistry. These data will provide critical information required to adequately assess the immediate conditions in these water bodies as well as to monitor the success of any adaptive management practices which may be implemented as part of the proposed mining, reclamation, and preserve management activities.

Water quality monitoring involves investigating several parameters including, but not limited to, temperature, salinity, dissolved oxygen, conductivity, pH, nutrients (TKN, ortho-phosphates, T-PO₄, NH₃, NO₂, NO₃) and fecal coliform.

- c. The water quality monitoring program shall be re-evaluated and modified as necessary on an annual basis, depending on findings. Water quality monitoring shall be done in accordance with, the state of Florida, Department of Environmental Protection's, Standard Operating Procedures for Field Activities DEP SOP 001/01, February 1, 2004, or most recent edition.. Each sampling event shall contain at least one field cleaned equipment blank, or equivalent, and one field duplicate sample. Analysis of water quality samples shall be conducted by a Florida Department of Health, NELAC certified laboratory.
- d. Sample frequency: surface water sample shall be collected monthly, pesticide samples quarterly. Sediments shall be analyzed for pesticides annually. Groundwater shall be monitored quarterly.
- e. Water quality data shall be reported in, in accordance with FAC 62-160, and submitted to Lee County in prior approved electronic format.
- f. Sample site identifications will be assigned by Lee County.
- g. Lee County reserves the right to conduct field audits of the sampling events.

Surface Water Parameter Levels:

Parameter	Detection limit	Frequency
Nitrite (NO ₂)		Monthly
Nitrate (NO ₃)		Monthly
Ammonia		Monthly
Total Kjeldahl Nitrogen (TKN)		Monthly
Total phosphorus		Monthly
Ortho phosphorus, dissolved		Monthly
pH		Monthly

Conductivity		Monthly
Dissolved oxygen		Monthly
Temperature (degrees Celsius)		Monthly
Turbidity		Monthly
Total Suspended Solids (TSS)		Monthly
Color		Monthly
Chlorophyll		Monthly
Pesticides	See table	Quarterly
Enterococci		

Groundwater Parameter Levels:

pH	Detection limit	Frequency
Conductance		Monthly
Temperature		Monthly
Dissolved oxygen		Monthly
BOD		Monthly
Color		Monthly
Sulfate		Monthly
Chloride		Monthly
Total dissolved solids		Monthly
Water table elevation		Constant
Nitrite		Monthly
Nitrate		Monthly
Ammonia		Monthly

- h. Provide surveyed cross sections of all wetlands, spot elevations within the farm fields and historic seasonal high water level elevations using natural benchmarks within the wetland preserves. This information will be submitted to and approved by Lee County prior to the commencement of monitoring.
 - i. Historic surface water flow patterns across the site, including inlet and discharge points will be restored flowing mining. The mine plan and mine reclamation plan shall be modified to reflect this change.
 - j. Provide an accurate hydric soils map of site and sub-basins with baseline data.
 - k. Hydroperiods within the wetland preserves shall be three to five months.
13. Any damage directly attributable to this mining operation to the improved or unimproved roadways must be repaired by the holder of the mining operation permit.

14. The Applicant will be subject to any duly adopted roads impact or mitigation fees for mining/excavation uses, provided such fees are adopted and applicable within the duration of the mining operation permit. The applicant agrees to participate in any costs to establish a weigh station or any similar method approved by the Lee County Board of County Commissioners to mitigate truck traffic impacts including, but not limited to, payment for additional Sheriff patrols, weigh station, tolls, etc.
15. Dewatering (as defined in the Land Development Code) is not a permitted activity within this planned development.
16. Trucks entering or leaving the mine must be instructed not to use Corkscrew Road, west of Alico Road, for access to or from I-75 or U.S. 41 and must instead be instructed to use Alico Road. The owner and/or operator of the mine and/or their successors must instruct all trucks using the mine to observe this rule and cooperate with the other regulatory agencies in its enforcement. "Instruction" includes signs posted and clearly visible at the scale house, the office, and the egress point onto Corkscrew Road.
17. As part of the local development order and throughout the duration of the project, a vehicular wash down facility must be installed and operated for all exiting traffic. The facility must be located at least 125 feet from the roadway, be of paved surface from the roadway to the facility, and be included in the storm water pollution prevention plan (SWP3). The plans for the facility must be submitted to the Natural Resources Division for review and approval. Compliance will be a performance measure based on no visible tracking onto the public roadway.
18. Excavated material must not be placed within 200 feet of any preserve area.
19. All general trees required by Section 10-416 (a) of the Land Development Code must be varieties native to southwest Florida and appropriate for this site.
20. All uses, with the exception of Excavation, mining, are considered as accessory uses and must cease operation when the on-site mining operation also ceases to operate.
21. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.
22. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b).
23. The operator of the mining operation and/or the property owner must prepare and keep on-site a Pollution Prevention Plan. The plan should address any potential source 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. A copy of the

Pollution Prevention Plan must be submitted when applying for the Mining Operations Permit.

24. **AGRICULTURAL USES:** Existing bona fide agricultural uses on this site are allowed only in strict compliance with the following:

- a. Bona fide agricultural uses that are in existence at the time the application for this project was filed, and as shown on Exhibit ___ attached hereto, may continue until approval of a local development order for the area of the project containing those uses.

[Note: The referenced exhibit must consist of existing bona fide uses documented in a sworn affidavit from the property owner describing the type and intensity of bona fide agricultural uses in existence on the date of the zoning application, i.e., livestock grazing or crop production. The applicant must include acreage figures for each use as part of the sworn affidavit. The affidavit must include an exhibit depicting the location of the uses on a copy of the boundary sketch. The exhibit should be entitled "Bona fide Agricultural Uses at time of Zoning Application."]

- b. Additional clearing of trees or other vegetation in agricultural areas is prohibited. Existing areas of bona fide agricultural use may be maintained, i.e., mowed, but not cleared or expanded. This prohibition is not intended to preclude County approved requests for the removal of invasive exotic vegetation.
- c. Prior to issuance of a local development order, the property owner must provide written proof, subject to approval by the County Attorney's Office, of the following:
 - (1) Termination of all agricultural use on any portion of the property included in the development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the subject property that specifically provides:
 - a) the date the agricultural uses ceased;
 - b) the legal description of the property subject to the development order approval;
 - c) an affirmative statement that the owner acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the county that they will not allow any such uses on the property unless and until the property is re-zoned to permit such uses; and,
 - d) that the affidavit constitutes a covenant between the owner and the county that is binding on the owner and their assignees and successors in interest.

The covenant must be properly recorded in the public records of the county at the owner's expense.

- (2) Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to termination must include of a copy of the request to terminate the tax exemption provided to the Property Appraiser.
25. Prior to approval of a Mining Operations Permit, the applicant must provide documentation that there are adequate provisions, or the operation will provide adequate provisions, for fire fighting within this mining operation. This may take the form of a letter from the fire department/district serving the site, or by use of appropriate equipment to be kept on-site for the purposes of fighting fires. The latter must be a commitment as part of the Mining Operations Permit and located on-site prior to beginning the mining operation.
26. Water trucks must be used to keep all internal haul roads dust free.
27. The owner of the property must provide a quarterly report to the Development Services Division detailing the number of truck trips entering and leaving the site on a daily basis. The average number of daily truck trips during each quarter cannot exceed the applicant's TIS calculations of 414 two-way, daily trips. If exceeded, this will be deemed a violation of the zoning approval.

B. Deviations

Deviation 1 seeks relief from LDC Section 34-1681(a)(2)a.2. which requires excavations must maintain a setback of 100 feet from a private property line under separate ownership; to allow a 50 foot setback. This deviation is recommended to be **DENIED**.

The applicant has not adequately demonstrated that the deviation is needed to enhance the achievement of this planned development, nor demonstrated that approval of the deviation will protect the health, safety, and welfare. In addition, this deviation is not needed as the Master Concept Plan commits to mining setbacks of 100 feet, in conformance with this Section of the Land Development Code.

Deviation 2 seeks relief from LDC Section 34-1681(a)(8) which requires the bank may be sloped a minimum of 4 horizontal to 1 vertical to four feet only if approved by deviation; to allow this slope rather than the required 6 horizontal to 1 vertical to a water depth of 4 feet below the dry season water table. This deviation is recommended to be **DENIED**.

Again, as in Deviation 1, the applicant has not adequately demonstrated that the deviation is needed to enhance the achievement of this planned development, nor demonstrated that approval of the deviation will protect the health, safety, and welfare.

Deviation 3 seeks relief from LDC Section 34-1681(a)(8) which requires two means of ingress and egress for any industrial development of more than 10 acres; to allow one

means of ingress and egress to Corkscrew Road. This deviation is recommended to be **DENIED**.

The applicant has also stated in their justification that their plan depicts a second means of ingress and egress. In review of the plan this is true. Staff has not included the requested connection as part of any approval of this application. This recommendation includes this access point as a possibility. Therefore, this deviation is not needed as the applicant has demonstrated that they will comply with the requirements of the Land Development Code.

C. Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of planned development rezonings, staff makes the following findings and conclusions:

1. The applicant has proved entitlement to the rezoning to Industrial Planned Development (IPD) by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.
2. The requested IPD zoning, as conditioned:
 - a) meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;
 - b) is consistent with the densities, intensities and general uses set forth in the Lee Plan;
 - c) is compatible with existing or planned uses in the surrounding area; and
 - d) will not adversely affect environmentally critical areas or natural resources.
3. Approval of the requested IPD will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development.
4. Urban services are not available to serve the proposed land use.
5. The proposed use is appropriate at the subject location.
6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.
7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

III. BACKGROUND INFORMATION AND ANALYSIS:

Introduction/Synopsis

The application is seeking approval of a rezoning to Industrial Planned Development (IPD) and a General Mining Permit to allow an excavation, mining operation on the subject property. The applicant has described that the operation will be strictly a "fill pit" operation not a "construction materials mining operation" as defined in Florida Statutes, Chapter 552, Section 552.30.

Master Concept Plan

The Master Concept Plan (stamped received on August 4, 2006) is a 5 page plan. The proposed mining operation is a five Phase plan, each phase lasting 2 years. Phase One is located at the northern portion of the site with Phases 2 through 5 progressing from north to south, towards Corkscrew Road.

The proposed minimum excavation setbacks on the Plan are: 200 feet from Corkscrew Road, 50 feet from the northern property line, 100 feet from the eastern property line, 50 feet from the western property line, and 50 feet from the two AG-2 zoned residential property lines.

The proposed maximum depth of the mining operation is 40 feet.

Lee Plan Considerations

In summary, staff finds that the limited use of this site for a excavation, mining operation that would act as a "fill pit" operation rather than a "construction mining materials operation" (as committed to by the applicant as part of this application) is consistent with the Lee Plan, as conditioned in the staff recommendation.

The subject property and adjoining properties are all designated as Density Reduction/Groundwater Resource and Wetlands on the Lee Plan Future Land Use Map. The Lee Plan provides the following descriptions of these land use categories:

POLICY 1.4.5: The Density Reduction/Groundwater Resource (DR/GR) areas include upland areas that provide substantial recharge to aquifers most suitable for future wellfield development. These areas also are the most favorable locations for physical withdrawal of water from those aquifers. Only minimal public facilities exist or are programmed. Land uses in these areas must be compatible with maintaining surface and groundwater levels at their historic levels. Permitted land uses include agriculture, natural resource extraction and related facilities, conservation uses, publicly-owned gun range facilities, private recreation facilities, and residential uses at a maximum density of one dwelling unit per ten acres (1 du/10 acres). Individual residential parcels may contain up to two acres of Wetlands without losing the right to have a dwelling unit, provided that no alterations are made to those wetland areas.

Private Recreational Facilities may be permitted in accordance with the site locational requirements and design standards, as further defined in Goal 16. No Private recreational

facilities may occur within the DR/GR land use category without a rezoning to an appropriate planned development zoning category, and compliance with the Private Recreation Facilities performance standards, contained in Goal 16 of the Lee Plan. (Amended by Ordinance No. 91-19, 94-30, 99-16, 02-02)

OBJECTIVE 1.5: WETLANDS. Designate on the Future Land Use Map those lands that are identified as Wetlands in accordance with F.S. 373.019(17) through the use of the unified state delineation methodology described in FAC Chapter 17-340, as ratified and amended in F.S. 373.4211. (Amended by Ordinance No. 94-30)

The request seeks approval of zoning and a General Mining Permit to allow an Excavation, mining use on the subject property. Uses that may be allowed in the DRGR category includes natural resource extraction and related facilities. The requested use is consistent with this future land use category.

POLICY 1.7.6: The Planning Communities Map and Acreage Allocation Table (see Map 16 and Table 1(b) and Policies 1.1.1 and 2.2.2) depicts the proposed distribution, extent, and location of generalized land uses for the year 2020. Acreage totals are provided for land in each Planning Community in unincorporated Lee County. No final development orders or extensions to final development orders will be issued or approved by Lee County which would allow the acreage totals for residential, commercial or industrial uses contained in Table 1(b) to be exceeded. This policy will be implemented as follows:

1. For each Planning Community the County will maintain a parcel based database of existing land use. The database will be periodically updated at least twice every year, in September and March, for each Planning Community.
2. Project reviews for development orders must include a review of the capacity, in acres, that will be consumed by buildout of the development order. No development order, or extension of a development order, will be issued or approved if the project acreage, when added to the acreage contained in the updated existing land use database, exceeds the limitation established by Table 1(b), Acreage Allocation Table regardless of other project approvals in that Planning Community.
3. No later than the regularly-scheduled date for submission of the Lee Plan Evaluation and Appraisal Report, and every five years thereafter, the County must conduct a comprehensive evaluation of Planning Community Map and the Acreage Allocation Table system, including but not limited to, the appropriateness of land use distribution, problems with administrative implementations, if any, and areas where the Planning Community Map and the Acreage Allocation Table system might be improved. (Amended by Ordinance No. 94-29, 98-09, 00-22)

The proposed project complies with the Allocation Table for the Southeast Lee County planning community. This community has 4,290 acres. The use of a mining operation is considered agricultural for the purposes of the allocation table. The allocation tables do not provide for acreage allocations for agricultural uses. Therefore this Policy does not address this application.

OBJECTIVE 2.1: DEVELOPMENT LOCATION. Contiguous and compact growth patterns will be promoted through the rezoning process to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities. (Amended by Ordinance No. 94-30, 00-22)

POLICY 2.1.1: Most residential, commercial, industrial, and public development is expected to occur within the designated Future Urban Areas on the Future Land Use Map through the assignment of very low densities to the non-urban categories.

It is recognized that the adjoining property to the west of this site is currently approved and operating as a mining operation. This request would represent a contiguous pattern of use given this adjoining land use. Since this is not an urban use, all urban facilities and services are not needed to support this development. The applicant, if the rezoning is granted and a local development order is sought, will be required to show provision for fire and EMS access the site. The applicant's transportation expert concludes that the level of service for Corkscrew Road will be acceptable during this project, finding a future Level of Service of "D".

OBJECTIVE 2.2: DEVELOPMENT TIMING. Direct new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created. Development orders and permits (as defined in F.S. 163.3164(7)) will be granted only when consistent with the provisions of Sections 163.3202(2)(g) and 163.3180, Florida Statutes and the county's Concurrency Management Ordinance. (Amended by Ordinance No. 94-30, 00-22)

POLICY 2.2.1: Rezoning and development-of-regional-impact proposals will be evaluated as to the availability and proximity of the road network; central sewer and water lines; community facilities and services such as schools, EMS, fire and police protection, and other public facilities; compatibility with surrounding land uses; and any other relevant facts affecting the public health, safety, and welfare. (Amended by Ordinance No. 94-30, 00-22)

Although the subject property is not within an future urban area of the Lee Plan, staff has analyzed this case in relationship to this Policy and provides the following comments. The applicant's transportation expert concludes that the Level of Service of Corkscrew Road will be "D". A problem related to this application is the impacts of truck traffic on residential areas west and northeast of this site. Approval of this zoning will cause truck traffic traveling westbound and east (then north) from this site to pass through these residential areas located north and south of Corkscrew Road before the intersection of Alico Road and the urban development found west of Alico Road on both sides of Corkscrew Road. The rezoning is not for a use that requires central sewer and water to support the development. Provisions will be made during the local development order process to make sure that adequate provisions are made for fire, EMS, and police protection. Immediate surrounding land uses consist of agricultural uses and a mining operation. Further west and northeast of this site, residential development is found.

POLICY 7.1.1: In addition to the standards required herein, the following factors apply to industrial rezoning and development order applications:

1. The development must comply with local, state, and federal air, water, and noise pollution standards.
2. When located next to residential areas, industry must not generate noise levels incompatible with the residential development.
3. Bulk storage or production of toxic, explosive, or hazardous materials will not be permitted near residential areas.
4. Contamination of ground or surface water will not be permitted.
5. Applications for industrial development will be reviewed and evaluated as to:
 - a. air emissions (rezoning and development orders);
 - b. impact and effect on environmental and natural resources (rezoning and development orders);
 - c. effect on neighbors and surrounding land use (rezoning);
 - d. impacts on water quality and water needs (rezoning and development orders);
 - e. drainage system (development orders);
 - f. employment characteristics (rezoning);
 - g. fire and safety (rezoning and development orders);
 - h. noise and odor (rezoning and development orders);
 - I. buffering and screening (planned development rezoning and development orders);
 - j. impacts on transportation facilities and access points (rezoning and development orders);
 - k. access to rail, major thoroughfares, air, and, if applicable, water (rezoning and development orders);
 - l. utility needs (rezoning and development orders); and
 - m. sewage collection and treatment (rezoning and development orders).
(Amended by Ordinance No. 00-22)

If approved, this use/development will have to comply with the requisite noise and pollution standards. The project is not adjoining residential development, but does adjoin two parcels zoned AG-2 and noted as being used as single family residences. There are no proposals for the bulk storage of materials adjacent to residential land uses. As conditioned in the recommended zoning action, impacts on the natural environment and water quality and needs have been considered. Staff finds these conditions are necessary to provide for protection of the environment and the water quality and quantity both surficial and underground. The development has not sought any variances or deviations from air emission control regulations. Approval of this request will provide added employment opportunities during the life of the mining operation. No deviations have been sought from fire, safety, noise, and odor. Staff has recommended conditions related to the buffering and screening of the project. Utility provisions are not needed as the use does not require connection to public water and sanitary sewer. Staff finds the limited use of this site, as conditioned in the recommended zoning actions, is consistent with this Policy of the Lee Plan.

POLICY 7.1.2: Industrial developments requiring rezoning and meeting Development of County Impact (DCI) thresholds must be developed as Planned Developments designed to arrange uses as an integrated and cohesive unit in order to:

- promote compatibility and screening;
- reduce dependence on the automobile;
- promote pedestrian movement within the development;
- utilize joint parking, access and loading facilities;
- avoid negative impacts on surrounding land uses and traffic circulation;
- protect natural resources; and
- provide necessary facilities and services where they are inadequate to serve the proposed use.

(Amended by Ordinance No. 94-30, 98-09, 00-22)

The applicant wants to be allowed to have a mining operation on the subject property. The LDC requires this type of use to be approved as a planned development as it meets the threshold for this use. In the recommended conditions, staff has limited the depth of the mining operation, the hours of operation, the provision of monitoring wells, prohibited dewatering, required the development of a buffer, and requiring quarterly reports on the number of trucks entering and leaving the site. All of these conditions have been offered to offset the impacts of this development on the nearby residential land uses to the west and east/north that the traffic from this development must travel through to get to their destinations. Staff concludes that this request as conditioned, is consistent with this Policy of the Lee Plan. As conditioned, in the recommended zoning action the natural resources are being protected.

POLICY 7.1.3: Industrial land uses must be located in areas appropriate to their special needs and constraints, including, but not limited to, considerations of: topography; choice and flexibility in site selection; access by truck, air, deep water, and rail; commuter access from home-to-work trips; and utilities; greenbelt and other amenities; air and water quality considerations; proximity to supportive and related land uses; and compatibility with neighboring uses. (Amended by Ordinance No. 93-25, 94-30, 00-22)

The proposed industrial use has special needs and constraints in that the use must be located where the resource is located. The site is accessed by truck using Corkscrew Road for the pick-up and delivery of the material. The project must comply with all air and water quality standards. As this is a fill pit operation there are no related or supportive uses that the use must be proximate to. Compatibility with adjoining uses must consider the use of those properties. North, east, and south of the property are agricultural uses. West of the property is another mining operation. Finally, northeast and southwest of the site are parcels identified as being single family residential. The parcel in the southwest corner is owned by the owners of the adjoining mining operation. The home to the northeast is owned by a trust and is currently occupied. Based on the limited "fill pit mining" activities and the conditions of approval, staff finds that this rezoning is consistent with this Policy as conditioned.

POLICY 7.1.5: The timing and location of industrial development will be permitted only with the availability and adequacy of existing or planned services and facilities. (Amended by Ordinance No. 00-22)

The only public service and facilities needed to support this development are roads and electric supply. Electrical supply is available along Corkscrew Road. Corkscrew Road is a county maintained, two lane, arterial road. Adequate services are available to serve the proposed use of this site. The applicant's transportation expert concludes that the Level of Service of Corkscrew Road with this project is LOS "D". In finding that there are adequate facilities to support this use and zoning, staff finds that this request, as conditioned, is consistent with the Lee Plan.

POLICY 7.1.9: Industrial development will not be permitted if it allows industrial traffic to travel through predominantly residential areas. (Amended by Ordinance No. 00-22)

Approval of this zoning will inherently allow industrial traffic to travel through residential areas to the northeast and west of this site. Single family development is found northeast of this site and west of this site off of Corkscrew Road. The approval of a mining operation on this site will allow the potential for up to 414 two-way daily trips, thereby increasing the potential for truck and passenger vehicle conflicts. The predominant land use west of this site to Alico Road and north is agricultural. Single family homes are also located in this same area interspersed with the agricultural uses. Further west along Corkscrew Road (and west of Alico Road), the predominant land use does change to residential land use and commercial use, with an elementary school. This is a very difficult case as it requires balancing the need for "fill dirt" with the very intense and incompatible nature of mining operations.

GOAL 10: NATURAL RESOURCE EXTRACTION. To protect areas containing identified natural resources from incompatible urban development, while insuring that natural resource extraction operations minimize or eliminate adverse effects on surrounding land use and natural resources. (Amended by Ordinance No. 02-02)

OBJECTIVE 10.1: Designate through the rezoning process sufficient lands suitable for providing fill material, limerock, and other natural resource extraction materials to meet the

county's needs and to export to other communities, while providing adequate protection for the county's natural resources. (Amended by Ordinance No. 94-30, 02-02)

Approval would designate additional lands through the rezoning process for providing fill material. Approval, as conditioned in the recommended zoning actions, provides the opportunity to removal material from this site as fill material. The recommended conditions also provide for adequate protection for the other county natural resources, including potable water, drainage, and wildlife.

POLICY 10.1.2: Applications for natural resource extraction permits for new or expanding areas must include an environmental assessment. The assessment will include (but not be limited to) consideration of air emissions, impact on environmental and natural resources, effect on nearby land uses, degradation of water quality, depletion of water quantity, drainage, fire and safety, noise, odor, visual impacts, transportation including access roads, sewage disposal, and solid waste disposal. (Amended by Ordinance No. 00-22, 02-02)

The use of this site must meet state requirements for air emissions. The applicant has provided their environmental assessment. Impacts on nearby land uses are limited with the use of a fill pit operation, but traffic will be increased given the additional 414 two-way daily trips that will use Corkscrew Road to access the site, if the zoning is granted. Still the applicant's transportation expert notes that the Level of Service with this development is acceptable. Staff analysis finds that the recommended conditions provide for the protection of the environmental and natural resources, and provides for the protection regarding the degradation of water quality and depletion of the water quantity. Noise and visual impacts are reduced with the proposed buffering of the project. The planned development is consistent with the Lee Plan as conditioned in the recommended zoning actions.

POLICY 10.1.3: Applications for natural resource extraction permits for new or expanding sites must include a reclamation plan which provides assurance of implementation. Reclamation plans in or near important groundwater resource areas must be designed to minimize the possibility of contamination of the groundwater during mining and after completion of the reclamation. (Amended by Ordinance No. 00-22, 02-02)

POLICY 10.1.4: Natural resource extraction activities (and industrial uses which are ancillary to natural resource extraction) may be permitted in areas indicated on the Future Land Use Map as Rural, Open Lands, and Density Reduction/Groundwater Resources, provided they have adequate fire protection, transportation facilities, wastewater treatment and water supply, and provided further that they have no significant adverse effects such as dust and noise on surrounding land uses and natural resources. In order to reduce transport costs and minimize wear on the county's roadways, the extraction and transport of fill material may also be permitted as an interim use in the Future Urban Areas provided that the above requirements are met; however, special restrictions may also be applied to protect other land uses. These determinations will be made during the rezoning process. (Amended by Ordinance No. 94-30, 00-22, 02-02)

Adequate fire provisions have been committed to as part of this mining operation with the condition offered as part of the recommendations of approval. The applicant's transportation expert concludes that adequate transportation facilities are available to serve

the use of this site. Wastewater disposal and potable water supply will be provided as part of any use of this site. Dust is regulated as part of the conditioning of this project through the use of water trucks keeping the internal roads dust free. Water supply is being protected with the proposed monitoring conditions and the condition regarding the elevation of the water. In staff's opinion, as conditioned in the recommended zoning action, the planned development is consistent with these Policies of the Lee Plan.

Neighborhood Compatibility

Mining operations are intense uses and inherently incompatible with residential land uses. Traffic impacts will occur. Although the Level of Service may not fall below the minimum acceptable standards, truck traffic on Corkscrew Road will be exacerbated. There are 3 proposed mining operations currently in for rezoning in this area. The Board of County Commissioners has asked staff to further study this issue. During the Management and Planning Committee meeting of August 14, 2006, the Board took up the issue of whether commercial mines should be included in the CRSA or subject to impact fees. During this meeting the Board members expressed concerns with the impact to the roads caused by a large number of trips these heavy vehicles have in their trips to and from the mining operations. The Board wants to find a equitable way to mines participate in helping to fund the costs to improve the roads. Staff is currently researching several options. A condition (Condition 14) has been included to allow for possible solutions to mitigate these impacts.

Staff would like to point out that there are two other current applications for excavation, mining operations on the north side of Corkscrew Road, east of Alico Road. One, a 255 acre parcel located in Section 22, is proposing a mining operation with a proposed excavation depth of 125 feet. The other is a 1,365 acre site located in Sections 19, 23, and 24 which is proposing an excavation depth of 25 feet.

Truck traffic generated by this development will affect the traveling public located northeast and west of this site. The applicant's Traffic Impact Statement (TIS) indicates the vast majority of the traffic will be westward to and from the site. As Corkscrew Road is the only road serving this property, any vehicle traveling to or from this site will use Corkscrew Road. The applicant's transportation expert concludes that with the increased traffic related to this proposed zoning, the Level of Service of Corkscrew Road will remain acceptable at LOS "D".

Environmental Issues

The Division of Environmental Sciences (ES) staff have reviewed the proposed Estero Group Industrial Planned Development (IPD) for a mine and provided a report with their findings and recommendations (see Attachment I). The following summarizes this attached report.

The majority of the property consists of abandoned groves and other abandoned agricultural lands including drainage ditches, presumably supporting the old agricultural operations. Other disturbed areas include Brazilian pepper and spoil area. The remaining portion of the land pine flatwoods with Brazilian pepper; cypress with Brazilian pepper ; cypress; and freshwater marsh). There are approximately 29.79 acres identified as State

jurisdictional wetlands. The existing indigenous plant communities include the cypress and freshwater marsh areas.

Large industrial projects are required to provide twenty percent (20%) open space per Land Development Code (LDC) Section 10-415(a). The proposed Master Concept Plan (MCP) indicates that 20% or 63.72 acres of open space is required and 22% or 71.17 acres is provided. Fifty percent (50%) of the open space must be provided through the preservation of existing indigenous plant communities and native tree preservation areas per LDC Section 10-415(b)(1)(a) & (b). The proposed project is required to provide 31.86 acres of indigenous preservation. The proposed MCP states that 27.77 acres of preserves are provided and notes that "site conditions do not contain sufficient existing indigenous native vegetation" and "indigenous native trees will be preserved." The proposed preserves do include the entirety of the 24.84 acres of existing indigenous plant communities and native tree areas.

The overall open space and long term indigenous areas will be more than what is indicated on the Master Concept Plan with the implementation of perimeter setbacks and wetland preserve buffers as recommended through Kevin Erwin's analysis of the project. The 200-foot perimeter setback and wetland preserve buffers serve two purposes: 1. The protection of groundwater levels; and 2. Wildlife habitat. The 200-foot perimeter setback provides an opportunity to buffer the adjacent lands from the industrial mining use while restoring wildlife habitat. The Corkscrew Road corridor can be initially buffered through the installation of a 60-foot wide buffer. Then the remaining 170-feet of the 200-foot perimeter setback may be planted with appropriate native vegetation to restore the area to native wildlife habitat such as a pine flatwoods using minimum 3-gallon container size trees and minimum 1-gallon container size midstory and groundcover plants. There is potential for native seed source to germinate from the existing soils, so care must be taken in preparing this area for planting. Similar plantings would be appropriate along the north and east property lines.

A protected species survey for Lee County listed species meeting the requirements of LDC Section 10-473 was compiled by the applicant and no Lee County listed species were observed.

However, this area is likely to have wading bird foraging activity including woodstorks particularly after the excavation begins. Additionally, the project lies within the US Fish and Wildlife Service panther consultation area. A condition (Condition 4) has been recommended to provide wading bird and woodstork foraging habitat.

The project lies within the US Fish and Wildlife Service panther consultation area. review of the proposed projects impact on the Florida panther by the US Fish and Wildlife Service (USFWS) will need to be obtained prior to the issuance of a development order. This review typically occurs during the Army Corps of Engineers (ACOE) permit review. If no ACOE wetland impacts are proposed, then direct consultation with the USFWS will be necessary. A condition (Condition 5) has been recommended to address this issue.

A reclamation plan was compiled by the applicant. The proposed plan includes a three page document including title page entitled "Estero Group LTD, Reclamation Plan" dated December 1, 2005/March 10, 2006 and stamped received by Community Development May

15, 2006, and a one page 24 x 36 inch detail plan including the proposed cross-section of the littoral zone to be constructed. The proposed plan meets some of, not all of, the requirements for a rehabilitation and reclamation plan as required by LDC Section 34-1675(a)(8). In particular, the timing of commencing the reclamation and the completion of planting the littoral shelves is required.

The proposed littoral planting is consistent with the littoral planting required for surface water management lakes within developments. However, the size and depth of the proposed mine lake is much larger and deeper than a standard surface water management lake. In order to provide a source of organic matter to prevent a "dead" lake in the future, ES staff recommends that enlarged littoral zones be incorporated into the mine reclamation plan. These expanded littoral zones will provide a number of ecological benefits including a source of organics to support aquatic organisms and provide a more complete biological system, water quality improvement through the uptake and settling of nutrients, and wildlife habitat.

ES staff is concerned with the proposed note on page two of the reclamation plan that states "Site cleanup at completion of mining will consist of removing or adequately burying all debris, litter, junk, equipment, or materials." This may be interpreted as allowing the burial of all items associated with the mining activities including drag lines, tires, vegetation, fuel containers, explosives, other litter, junk or equipment. ES staff recommends the language be modified to indicate that "Site cleanup at completion of mining will consist of removing all debris, litter, junk, equipment, or materials from the property." Condition 6 addresses the revision of the reclamation plan.

In addition, Kevin Erwin has been hired by Lee County in order to assist in the review of the three existing mining cases. His review focuses on water quality, surface water, shallow groundwater management, and wildlife conservation. Several conditions have been offered by Mr. Erwin addressing these issues. His complete report is found as Attachment J.

Transportation

The applicant has supplied a transportation impact statement (see Attachment C). In the most recent submittal, the applicant's expert concludes that the Level of Service along Corkscrew Road with or without this project is a LOS "D". The proposed operation is expected to generate 414 daily, two-way, truck trips (with the assumption that there is an even distribution of the removal of material over the 10 years of the project).

Lee County DOT reports that they have no substantive comments concerning this application.

Lee County Development Services reports (Attachment F) that the project, if approved, will generate 64 new trips in the peak hour. The conclusion is that the project will create no significant traffic impacts to any roadways as the project generates less than 100 peak hour trips, as defined in Administrative Code. They also concur with the applicant's expert that the Level of Service along Corkscrew Road with the project will be LOS "D". Staff also finds that in 2008, Alico Road north of Corkscrew Road would operate at LOS E in that year, but with the projects impacts added, Alico Road will operate at LOS F. However in a revised memorandum (also in Attachment F), Development Services corrects their LOS finding on

Alico Road. The revision finds the road would be at LOS B, and changing to LOS C with the project traffic added

Florida Panther Mitigation

Recent concerns have been raised by the National Wildlife Federation concerning the loss of panther habitat. They have urged the U.S. Fish and Wildlife Service (FWS) to take a stand on mining and other excavation activities and their potential impacts on the Florida Panther. They note that vehicular collisions are a leading, preventable source of panther mortality. It is their belief that mining operations should be applying to FWS for an Incidental Take Permit.

IV. SUBJECT PROPERTY:

- A. STRAP: The applicant indicates the STRAP number is: 23-46-27-00-00001.0000, 23-46-27-00-00002.0000, .0010, and .0020

V. ATTACHMENTS:

- A. Map of surrounding zoning
- B. Applicant's supporting documentation
- C. Applicant's Traffic Impact Statement
- D. Reduced copy of proposed Master Concept Plan (not to scale)
- E. Comments from Lee County DOT
- F. Comments from Development Services
- G. Geotechnical Report
- H. Groundwater Quality Reports (two reports by Water Resource Solutions)
- I. Comments from Environmental Sciences
- J. Report from Kevin Erwin

LEGAL DESCRIPTION: See Exhibit A

cc: Applicant
County Attorney
Zoning File