

LEE COUNTY ORDINANCE NO. 10-26

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) CHAPTER 12 (RESOURCE EXTRACTION), AMENDING ISSUANCE OF APPROVALS; DURATION OF APPROVALS (§12-109); EXISTING MINE OPERATIONS (§12-121), AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (“Board”), is the governing body in and for Lee County; and,

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, 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 Policy 10.1.4 provides that 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; and,

WHEREAS, the 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 Lee County Executive Regulatory Oversight Committee reviewed the proposed amendments on May 12, 2010 and recommended their adoption; and,

WHEREAS, the Lee County Land Development Code Advisory Committee reviewed the proposed amendments on April 9, 2010 and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on May 24, 2010 and recommended their adoption; and,

WHEREAS, the Board finds adoption of these Amendments to the 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.

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

SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 12

Lee County Land Development Code Chapter 12 is hereby amended as follows, with deleted text identified with strike through and additional text identified with underlining.

**CHAPTER 12
ARTICLE II**

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

(a) through (d) *No change*

(e) Aggregate Mine Zoning Approvals Granted Prior to September 9, 2008.

- (1) Notwithstanding anything in Chapter 34 to the contrary, Master Concept Plans for aggregate mining approved as a planned development prior to September 9, 2008, are valid for a period of 20 years from the date originally approved by the Board of County Commissioners.
- (2) One extension of the Master Concept Plan may be approved by the Board of County Commissioners for a period not to exceed five years. The applicant must submit a request for extension to the Department of Community Development at least 180 days prior to the expiration of the Master Concept Plan.
- (3) The request for extension of the Master Concept Plan must include the following:

- a. Completed application form as established by the Department of Community Development and payment of the appropriate fee as established by the County.
 - b. A copy of the original zoning resolution approving the Master Concept Plan and all subsequent amendments.
 - c. A narrative providing justification for the extension request. The narrative must provide a detailed basis for the requested extension, a copy of all other permits that have been obtained for the proposed aggregate mine operation, a discussion of other permits that are pending or not applied for and the status of such permit requests, and such other documentation demonstrating that the applicant has been pursuing mine operation approvals in a diligent manner since adoption of the original Master Concept Plan.
- (4) The application for extension will be reviewed by the Department and scheduled for consideration by the Board of County Commissioners on a Board Zoning Agenda. The staff recommendation will address the following criteria:
- a. Whether the Master Concept Plan is consistent with the current Lee Plan.
 - b. Whether the justification for the extension request submitted by the applicant demonstrates diligent pursuit of the permits necessary to commence mining operations; and, whether the failure to obtain the necessary permits was beyond the reasonable control of the applicant.
- (5) The decision of the Board to approve or deny the extension request is discretionary.
- (6) In conjunction with an application for a Master Concept Plan extension, an applicant may request modification of the Master Concept Plan and conditions of zoning approval in order to bring the proposed mining operation into greater conformance with current existing regulations. In such event, the narrative required pursuant to Section 12-109(e)(3)c must address the changes requested and demonstrate the extent to which greater conformance with current regulations would be achieved by the modified Master Concept Plan and conditions. The application must include all contiguous property under common ownership for which aggregate mine zoning approvals have been granted but have not received subsequent development order approvals for mining, including those approved as an Industrial Planned Development, Residential Planned Development, or Special Exception.

Sec. 12-121. Existing Mine Operations.

(a) *No Change*

(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~~2018; 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~~2018). For purposes of this section the phrase "all or a portion of the mine" means (a) at least 20 percent 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~~2018, 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 six 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) through (j) *No Change*

SECTION TWO: 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 THREE: 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 FOUR: CODIFICATION AND SCRIVENER’S

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 re-lettered 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 re-lettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

SECTION FIVE: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the application for such project is complete and found sufficient before the effective date hereof.

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

Vacant	
Brian Bigelow	_____
Ray Judah	Nay
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND DATED THIS 8th DAY OF June, 2010.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Tammara Hall, Chair

APPROVED AS TO FORM:

By: _____
Michael D. Jacob
Office of County Attorney