

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2006-00007
APPLICANT: ESTERO GROUP IPD
HEARING DATE: NOVEMBER 8, 2006
STATUS HEARINGS: FEBRUARY 14, 2007
FEBRUARY 23, 2007 [cancelled]
CONTINUED HRG. DATES: JULY 18, 19, 20, 24 & 25, 2007
SEPTEMBER 4, 5 & 7, 2007
SEPTEMBER 11, 12, 14 & 27, 2007
OCTOBER 9, 2007
SPECIAL MEETING: AUGUST 31, 2007

I. APPLICATION:

This matter came before the Lee County Hearing Examiner as an Application for a Rezoning to a Industrial Planned Development (IPD) pursuant to the Lee County Land Development Code (LDC).

Filed by ESTERO GROUP LTD, 4099 Tamiami Trail, Suite 305m Naples, Florida 34103 (Applicant/Owner); BEVERLY GRADY, ROETZEL & ANDRESS, 2320 First Street, Suite 1000, Fort Myers, Florida 33901; and WAYNE ARNOLD . AICP, Q. GRADY MINOR & ASSOCIATES, P.A., 3800 Via Del Rey, Bonita Springs, Florida 34131(Agents).

Request is to Rezone 318± acres from the Agricultural (AG-2) zoning district to an 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

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 Section 23, Township 46 South, Range 27 East, Lee County, Florida (District #5).

II. STAFF REPORT AND RECOMMENDATION: APPROVAL WITH CONDITIONS

The Department of Community Development Staff Report was prepared by Chip Block. The Staff Report is incorporated herein by this reference.

III. RECOMMENDATION OF HEARING EXAMINER:

The undersigned Lee County Hearing Examiner recommends that the Lee County Board of County Commissioners **DENY, WITHOUT PREJUDICE**, the Applicant's request for a rezoning from AG-2 to IPD for the real estate described in Section IX. Legal Description.

IN THE EVENT, the Board of County Commissioners choose to approve the rezoning request, the Hearing Examiner recommends that the rezoning from AG-2 to IPD for the 318-acre mine use **only be approved subject to** the Conditions and Deviations attached hereto as **Exhibit A**.

IV. HEARING EXAMINER DISCUSSION:

HEARING EXAMINER SUMMARY

At first glance, this request to rezone a 318-acre parcel from AG-2 to IPD for development with a fill dirt mining operation appears to be fairly simple and straightforward. However, a more in-depth review reveals there are numerous complex factors and consequences that must be considered in arriving at a decision on this request. The most important factors involve:

- 1) the potential effect this use may have on the ability of this property and this area to continue to function as a water recharge area for the County's existing and future wellfield sites;
- 2) the potential effect this use will have on the continued viability and function of the surrounding environmentally sensitive lands and wildlife habitat;
- 3) the effect of the additional truck traffic on the public health, safety and welfare of the residents of the surrounding area; and
- 4) the compatibility of this intensive industrial use and its impacts on the surrounding lower intensity residential uses.

The subject property is located on the north side of Corkscrew Road, approximately seven miles east of the Alico Road/Corkscrew Road intersection, and is about two miles west of the Lee County line. It is abutted on the north and east by an ongoing agricultural operation and a single-family home at the northeast corner, on the west by an ongoing mining operation and then AG-2 zoned lands, and on the south by Corkscrew Road and then mix of single-family and agricultural uses on AG-2 zoned properties. It is designated DR/GR in the Lee Plan. (A full history of the area and discussion of Staff's, Applicant's and the public's presentations regarding the proposed mining operation are included below in the BACKGROUND portion of this document, starting on page 13.)

Although the site is only directly abutted by two single-family uses, the area on either side of Corkscrew Road, between Alico Road extension to the west, and SR 82 to the east contains numerous large ranchette-type residential "communities" and individual single-family ranchettes. Many of those residential uses have co-existed in this area of Lee County, with the agricultural uses, for more than 20 years - some for even as long as 50+ years. Many families lived in that area before Corkscrew Road was paved in 1994, and Corkscrew Road provides their only means to access to and from their homes. The residential uses to the northeast (Wildcat Farms) utilize both SR 82 and Corkscrew Road to reach other parts of Lee County and the southwest coast.

In addition, there are Southwest Florida Regional Planning Council and airport mitigation lands in very close proximity to the subject property. The mining activities must be reviewed to ensure that such uses are not inconsistent and incompatible with those already existing mitigation areas.

The rezoning hearing lasted 13 full days, during which numerous expert and lay witnesses presented testimony and documentation on behalf of the various parties. Expert witnesses were called in the following fields: transportation; site planning; hydrology; civil engineering with respect to surface water management; and wetlands ecology. Most of the lay witnesses were residents of the immediate area, with first hand knowledge and experience on how their lives and rural community have already been changed with the advent of mining by the Corkscrew Westwind Mine (Westwind Mine). Others were residents of the Estero community, who have also noticed unwelcome changes in their community from the increased mining truck traffic, and/or who feared impacts to the DR/GR (water recharge) lands and functions if more mining operations are allowed in this area of Lee County.

Applicant's and Staff's experts presented days of very technical testimony on the anticipated and potential effects of this mining operation on:

- 1) the natural wet and dry season hydrology in the surrounding DR/GR area;
- 2) on-site and off-site wetlands and wetland plant physiology; and
- 3) the water quality and water quantity in the DR/GR area.

Much of the technical information was intended to help the Hearing Examiner understand the proposed conditions in the Staff Report, specifically those relating to groundwater modeling, monitoring, and the periodic reporting for water quality and quantity purposes. Other technical evidence and testimony was intended to reassure the Hearing Examiner, as well as the public, that the mining operation, as conditioned in the Staff Report, would not have an adverse impact on the on-site and off-site wetlands or the water recharge functions, and would not adversely affect the nearby mitigation lands and other environmentally sensitive areas in the DR/GR area.

Many other matters came up in the hearing that the Hearing Examiner is not discussing in this Recommendation, as most of them were reactive to comments made by the various witnesses or to questions asked by the Hearing Examiner. Those matters involved crash courses on:

- 1) karst geological formations in Florida and its water conduction properties;
- 2) the location and functioning of the numerous aquifers found beneath the State of Florida;
- 3) the basics on groundwater flows in and around lakes or other bodies of water;
- 4) the basics on evaporation and evapo-transpiration with regard to lakes, closed pastures and wetland systems, which documented that more water is lost - through evaporation - from an open water body than from natural, undisturbed lands.

None of those experts, however, had specific knowledge and information on these matters as it related to the subject property or even the surrounding DR/GR area. While it was informative, the information was too generalized to provide more than a basic understanding of some of the principles associated with those fields of science. Thus, it could not be used as proof - conclusive evidence - of the conditions existing on the subject property or in the DR/GR at this time, nor to support Staff's and Applicant's beliefs that the numerous conditions were adequate to comply with the provisions of the Lee Plan.

At the end of the 13 days, the main issues facing the Hearing Examiner were whether the proposed conditions were adequate to ensure that the mining operation would not adversely impact:

- 1) the water quality, water quantity and recharge abilities of the County's public wellfield recharge lands; or
- 2) the existing wetlands and wildlife habitat, or the other environmental resources on this site and scattered throughout the DR/GR area; or
- 3) the safety, lifestyles, and quality of life of the existing residential population scattered throughout the surrounding area.

Careful review of the 17 transcripts and "mountains" of documentary evidence has led the undersigned Hearing Examiner to the following four conclusions:

Conclusion I Neither Lee County's nor Applicant's expert witnesses could state - with certainty - that the conditions discussed and proposed throughout the hearing would adequately protect the County's water, wildlife and natural resources in the DR/GR area, as is required in Policy 1.4.5, and Goals 10, 107, 114, 115 and 117.

Conclusion II There is a higher risk, and increased ease, of contaminant transfer in lakes/open water bodies than in groundwater flows that are filtered through the undisturbed soil and rock. Thus, there was a greater risk to the spread of a contaminant from this mine into the surrounding area and, ultimately, the County's wellfields. However, Staff was unable to ascertain - with any certainty - the exact degree of that risk (whether minimal or substantial), because they did not know enough about the hydrology or geology of the area, but they believed the risk was less than the risk for other mines in closer proximity to the wellfields.

Explanation - Staff and Applicant knew that the "impacts on the natural environment and water quality" had to be considered in the review of this zoning application, so Applicant's experts obtained modeling predictions that the mining use would result in a maximum drawdown of about three to four inches in the water table. It was Applicant's opinion that such a minor drawdown would have minimal adverse impacts on the DR/GR functions and the preservation/protection of wetlands and other environmentally sensitive lands and resources in the DR/GR area. They conceded, however, that their anticipated 3+-inch drawdown would be in addition to the drawdowns already occurring from the Westwind Mine operation as well as the ditching and "forced" run-off in the nearby agricultural operations.

Lee County's hydrology and modeling expert (specifically, Dr. Sam Lee) accepted Applicant's modeling results (3 to 4-inch drawdown) as predicting a "reasonable" outcome, but could not state, and did not know, whether that "reasonable" outcome was totally accurate, under the circumstances. He explained that the modeling performed by Applicant was based on "generalized" information - only a small amount of which was actually documented (known) information. The rest of the information involved geological and hydrological conditions "presumed" to exist on the site or in the DR/GR area. (*Lee, Transcript 10 at pages 134-207*) However, no model can reflect the actual/existing conditions of the site and surrounding area, so the modeling and result contain "certain uncertainties." (*Id, at page 145*)

For Staff to accurately predict and understand - with any degree of certainty - the areawide consequences of a fill dirt mine on this site, Staff needed specific - not generalized - information about the geological and hydrological characteristics of the subject property. (*Id,*

at pages 165 - 196, 198; Transcript 14, pages 64-67) Until they had that depth of information and then more accurate testing and additional modeling based on that information, Staff could not be certain that the fill dirt mine would not have unacceptable adverse impacts or consequences on the DR/GR area. (*Id* at pages 166-170, 198)

Dr. Lee) indicated repeatedly that he would have liked to have had more hydrological and geological information about the site and the modeling performed by Applicant, in order to make a more exacting decision on the possibility of adverse impacts on the DR/GR and the wellfields. (*Id*, at pages 146, 162 -165, 170-17, 195 -196; Transcript 14, pages 64-67) He indicated that he wanted a better comfort level that Applicant's drawdown prediction was right, but did not feel he could ask for that additional information. Lee County Zoning Staff had already declared this rezoning request to be "sufficient" about the time he began working with the County and the case was already proceeding for public hearing. (*id*, at page 162-165, 195-196) Despite wanting the additional information, Dr. Lee was willing to accept Applicant's results because he believed that he would get his additional information during the development order review process (*Id*, at pages 166-167, 196-198, 201).

It was noted numerous times during the public hearing that there were at least four other pending mining applications for lands within the DR/GR, some of which were extremely large, when compared to this request. It was Dr. Lee's and County Staff's opinion that this mine would have less impacts on the water quality and wellfields, simply because of its smaller size, shallower depth and distance from the wellfields and protection zones. They also believed that those impacts would be more "treatable" than the impacts that could be expected from the other larger mining requests being reviewed. (*Id*, at pages 150-165)

Regarding the protection of the wetlands on the site and in the area, Applicant's expert, Dr. Rasmussen, advised that, in his opinion, the agricultural drainage ditches in the area were already dewatering on-site wetlands and other wetlands in the area. He stated that the method by which those ditches were regulated/monitored could have a "critical bearing on the health of the wetlands and the hydroperiod in the region." (*Rasmussen, Transcript 14, pages 42-46*) It was his opinion that those ditches were already having a key impact on the hydrological conditions in the region, which could not be ignored.

He and Dr. Lee agreed that the removal of the dirt in the mining process would increase the ease and risk of contaminant transfer from this site to the surrounding sites and ultimately the County's wellfields. They explained that contaminants diffuse faster in water than when having to travel through dirt and rock, and will flow in any direction that the groundwater flows. (Groundwater flows are not typically in just one direction; at different levels, they can flow in any and all directions, including up and down among the aquifers.) However, the witnesses both noted the closer proximity of several other mines would most likely affect the wellfields' water quality before any contaminant from this mine would do so.

Staff recommended numerous conditions intended to alert Applicant and Staff of potential or existing problems with the water quantity and quality. Those conditions included the prohibition of dewatering and blasting in the excavation process, and required Applicant to provide monitoring wells for water quality monitoring and annual reporting of the results as means to control potential impacts. (*Staff Report, page 16*)

Arguments were made the County should be receiving more frequent reporting of the water quality and quantity on this site, because they are in the DR/GR region and adverse impacts could have long-ranging effects on this area and the public health, safety and welfare. (*Hart*

closing, Transcript 17, pages 32-34) Staff recognized that such reporting would result in the County receiving "stale" information about the conditions on the site and in the area, but they believed that Applicant would have already taken the proper actions necessary to correct any problems that might be found during the "routine" monitoring.

While Staff believed the impacts would be minimal and that the proposed conditions were sufficient to address any impacts, they admitted there was the possibility that something could be missed. They hoped that any oversight at this stage of the process would be caught and adequately addressed during development review, when Applicant would have to do more in-depth studies and testing. Based on the results of those in-depth studies and testing, Development Review Staff should be able to craft new or revise the proposed zoning conditions to achieve the Lee Plan goals of protecting the water quantity, water quality and environmental character of the DR/GR area. However, Dr. Lee conceded the possibility that the mining use could have adverse impacts on the DR/GR functions and lands, despite the conditions imposed in the zoning action. They simply did not know enough about the area at this time to know whether any conditions would be sufficient to protect future DR/GR functions and lands.

Questions arose throughout the public hearing about why the information was not available at the zoning level. The public was very concerned that the conditions being crafted by Staff and Applicant - after the zoning hearing - would have significant impacts on their lives and they would have no notice nor any opportunity to participate in the drafting of those conditions. They noted that Staff's conditions put off the collection of the needed data until the development review stage of the development process - which removed the public from the process all together. They felt the residents in that area have the most to lose if this mine is approved without adequate conditions, and should be allowed to review and comment on the conditions before those conditions are imposed in the development order. (*Id, Transcript 17, pages 24-69*)

Conclusion III Lee County Staffs' recommendations of approval were based, in large part, on five factors: 1) the abutting Westwind Mine use; 2) the small size and depth of this mine as compared to other pending mining requests in the area; 3) the location of this property, which is not in close proximity to the existing public wellfields; 4) the fact this request had already been deemed sufficient, when the County's hydrology expert was hired; and 5) that there was a public need for the fill dirt and such mine must be located where the resource is located.

Explanation - As previously noted and explained, the proposed fill dirt mine abuts the west boundary of a larger rock mine operation (Westwind Mine). Staff pointed out that the Westwind Mine had been found consistent with intent of the Lee Plan, with regard to the DR/GR protections, and they believed it would be wrong not to find this smaller, shallower mine consistent with the intent and provisions of the Lee Plan. They understood that the traffic impacts would increase and would affect the area roadways and residents, but argued that this mine's traffic would not lower the level of service on Corkscrew Road below an acceptable grade.

Staff clearly believed that the small size and shallow depth of this mine would result in only minor impacts to the DR/GR area, particularly when compared to the potential impacts that could occur from the larger mining requests. Applicant pointed out that this mine is separated from the nearest wellfield protection zone by about 3.8 miles, asserting that other mines

much closer to those wellfields pose a greater risk of contaminating the wellfields than this mine. (*Applicant's Exhibit 8*)

Despite the unknowns about the property and the potential for adverse impacts from the mining operation, Staff concluded that this mine, with the conditions they were imposing and/or that would be imposed during development review, would have little, if any, impacts on the County's wellfield operations. They did not believe the minimal water level drawdown nor the potential contamination of the waters in this excavation would affect the wellfields, because of the distance separating this mine from the nearest wellfield. Having reached that conclusion, Staff determined that this mine did not require the same depth of scrutiny as the larger mine applications, believing that any impacts from this mine could be compensated for with conditions or other mitigation. (*See Lee testimony cited above.*)

As noted in the preceding paragraphs, Lee County's expert did not require Applicant to provide more in-depth information about the hydrology or subsurface composition of this site, because the application had already been declared sufficient for public hearing. Any requests for additional information by him would have delayed the public hearing, which could have caused financial problems for Applicant and would have been inconsistent with the County's review and hearing procedures. So, he accepted what had been provided for Staff during their rezoning review, and concentrated on getting more detailed information from the other pending mining applications, as those had not been deemed sufficient at the time of the public hearing on this request.

With regard to the fifth factor, Staff acknowledged that "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." (*Staff Report, page 17*) They justified approving the use in this location by stating that this "proposed industrial use has special needs and constraints in that the use must be located where the resource is located." (*Id, page 17*) It appeared that statement was one of the key factors in their determination that the requested operation should be approved, as conditioned in the Staff Report.

The Hearing Examiner points out, however, that this is not a rock mine; this is a fill dirt mine. There are many other, less restrictive, less environmentally sensitive and more appropriate locations in Lee County that would allow for the mining of fill dirt. (For example, there is an active fill dirt mine operation off Burnt Store Road in northwest Lee County.) There is also a fill dirt mine on the south side of SR 82, in the DR/GR region, just northeast of the subject property.) Nothing was provided in the record that proved the *type of fill dirt* found in this location had special properties, nor that it was located only in this area of Lee County, nor that it was in special demand by the construction industry.

In the absence of such a showing, it is the opinion of the Hearing Examiner that the "need" for the requested mining operation at this location does not outweigh the County's need to protect its water resources, environmentally sensitive lands and the health, safety and welfare of the nearby residents. It is also her opinion, from the testimony at the public hearing, that, while they are attempting to address the protection of the resources and DR/GR functions through stringent conditions, Staff was still uncertain to what degree, if any, the potential adverse impacts will be eliminated, or compensated for, by their recommended conditions.

Conclusion IV The residents of the area will be adversely affected by the mining operation and the truck traffic associated with that operation, despite the conditions being recommended by Staff at the zoning hearing.

Explanation - The Hearing Examiner found that the testimony and evidence produced by the residents of the area documented that their lifestyles and quality of life have changed dramatically since the Westwind Mine began its operations in the early 2000s. They produced sound recordings, photographs, truck counts and personal encounters that described the impacts they are currently experiencing with the mine operations and the truck traffic. They cited incidents where the existing mine (Westwind Mine) operated at night and on Sundays, in violation of its approvals, and that the County had proven unable to adequately monitor the mining operation or enforce compliance with the conditions of approval. They believed a new mine would be just as "independent" of County supervision as the existing mine, and they would be the ones affected by it.

They were concerned that this mine would be approved as a 10-year fill dirt mine, but would then come back for approval to convert to a rock mine - with a much longer term and with blasting. They explained that already happening with the Westwind Mine, and they did not want to have it occur on this site. They understood that the County has no control over the use of blasting to break up the limerock, but noted that blasting in this area still affects their lives, regardless of who was responsible for its enforcement.

Although the residents were unhappy about the lights and noise from the trucks and the operation of the mining equipment, especially at night and in the early morning, every one of them was most affected by the daily truck traffic. Before the Westwind Mine was approved, the residents did not have daily problems with large trucks taking over the roadway; they had no problem leaving their property and getting onto and off of Corkscrew Road. They knew they had to watch out for agricultural trucks and equipment, but those were a seasonal occurrence, and did not disrupt their lives like the mining traffic has done.

Since the Westwind Mine commenced operation, they have feared for their lives, and the lives of their family members and friends, when traveling on Corkscrew Road. A large number of the truckers fail or refuse to obey traffic laws and show a total lack of respect and courtesy for other drivers/vehicles on the roadway. The residents complained that many of the drivers don't obey the speed limits and, sometimes, cannot stop in time for school buses or vehicles trying to turn off Corkscrew Road. The truckers pass on double yellow lines, on curves, in the rain and when the roadway is not clear, expecting the other vehicles to make way for them. They also try to intimidate the other drivers by tailgating the smaller vehicles, even school buses, and have been seen playing "chicken" with other vehicles on Corkscrew Road.

Many of the residents testified to being afraid to drive during the day because of the truck traffic, with the retirees and other older residents seemingly most intimidated by the truckers. Parents were afraid to let their teenage and/or older children get driver's licenses because they will have to drive on Corkscrew Road with the trucks to get to school and their other activities. The residents were adamantly against the increase in the truck traffic, seeing it as an increased danger to their lives.

Staff recognized, in their analysis, that "mining operations are intense uses and inherently incompatible with residential land uses." (*Staff Report, page 19*) In an effort to ensure compatibility between the industrial mining use and the nearby lower density residential uses,

Staff limited the depth of the mining operation to 20 feet and a term of 10 years, required a dense buffer along the south perimeter of the site, prohibited blasting on the site, and restricted the number of daily truck trips to an average of 414 - calculated on a quarterly basis. That works out to about 34 trucks per hour - or about 1.72 trucks per minute - (over a 6-day week and 12-hour days) - and was in addition to the mining truck traffic already utilizing Corkscrew Road.

Staff initially recommended that the mine only be allowed to operate five 12-hour days and a half-day on Saturday (8 a.m. to 12 noon) to give the residents in the area "respite" from the noise, odors and truck traffic on the weekends. (It should be noted that, given the shorter hours, the daily number of trucks will increase, which will result in more trucks per hour.) However, by the end of the hearing, Staff agreed to extended hours of operation: six 12-hour (6 a.m. to 6 p.m.) days per week, with the trucks only allowed to leave the site between 7 a.m. and 6 p.m.

In Staff's opinion, Applicant's choice not to seek any variances or deviations from "air emission control regulations" or from "fire, safety, noise and odor" regulations/requirements was a clear indication that the mining operation would not adversely affect the numerous residents in the DR/GR area. Their reasoning appeared to be that, since Applicant would have to comply with all of those County, state and federal regulations, the mining operation would/could not have adverse impacts on the existing residential uses.

The Hearing Examiner notes that, in her 17 years as a Hearing Examiner for Lee County, she cannot recall ever having a case in which an applicant requested deviations from regulations relating to fire, safety, noise or odor. In her opinion, the lack of such requests for deviations or variances is no guarantee that the nearby residential uses will not be affected by the mining operation. As such, she cannot place the same "value" on the lack of the deviations or variances that Staff seems to have placed on it.

The Hearing Examiner found the public's evidence and testimony proved that residents are being subjected to impacts that are incompatible with residential quality of life, and will be subject to greater adverse impacts, especially traffic, if this mine is approved. She understood their concerns about the health, safety and welfare of themselves, their family members and their friends when driving or traveling on Corkscrew Road. Corkscrew Road provides the only means of access to both the mine and the residential properties, so the truckers and residents must share the same roadway. Given the County's current inability to enforce the traffic related conditions on the Westwind Mine, it seems illogical for Staff to expect these same conditions to work for this mine and the truckers associated with the mine. No matter what conditions, if any, are placed on the mine operator regarding the use of Corkscrew Road, the truckers are independent haulers - not employees of the mine, and their driving activities cannot be controlled by the mine operator.

The Hearing Examiner has no doubt that the impacts - especially the truck traffic - already being experienced by these residents will increase with the approval of this mine. Given the above discussion, it is the Hearing Examiner's opinion that the proposed use is incompatible with the residential uses already occupying this area of the DR/GR lands. She also finds that the proposed mining operation will not be consistent with the intent of the Lee Plan provisions to protect its residents and residential areas, specifically:

- 1) Policy 5.1.5 (protect existing and future residential areas from the encroachment of incompatible uses);

- 2) Policy 135.9.5 (new development adjacent to existing residential neighborhoods must be compatible with or improve the area's existing character); and
- 3) Policy 135.9.6 (the zoning and permitting processes will be administered in a way that "proposed land uses acceptably minimize adverse drainage, environmental, spatial, traffic, noise, and glare impacts. . . upon adjacent residential properties")

In addition to the nuisance (noise, odor, dust) and personal safety impacts, the public argued that the Westwind Mine was the cause of the hydrological and environmental disruptions on their properties and in the surrounding area. Some of the residents have lived in the area for more than 20 years and never experienced any changes to the wetlands and uplands on their property or in the area until after the Westwind Mine operation commenced. They firmly believed that the Westwind Mine was the cause of these changes and the detrimental effect on the environmentally sensitive lands in the area. Pointing out that these changes have occurred, from just one mine in the past 8 years, they feared the hydrological impacts a second mine would have on their potable water wells and the wetlands and uplands in the area.

Despite their arguments, the Hearing Examiner cannot agree with the residents' claims that the Westwind Mine is responsible for the changed conditions in the area. She found that their allegations did not rise to the level of proof necessary to substantiate their claims; the testimony and documentation was simply not sufficient evidence to prove that the changed conditions in the area were the "fault" of the Westwind Mine. Even though the public's expert testified, and the documentary evidence revealed, that both upland and wetland hydrology has changed on their properties and in the area, the testimony and evidence did not establish the requisite direct causal link between the existing mining operation and those changes.

The Hearing Examiner concedes that the changes in the surface and groundwater flow patterns have occurred, but, faced with the lack of other proof, she could not ignore the extensive ditching done by the existing and previous agricultural operations on the north side of Corkscrew Road, which clearly accounted for some of the surface water flow changes. Both Applicant's and Staff's experts agreed that changes in the surface flow patterns would affect the hydrology of the entire surrounding area - not just the properties on which the ditching occurred.

Hearing Examiner Closing Comments

Lee Plan Policy 1.4.5 describes the lands within the DR/GR designation as including:

. . . 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. . . .

Although natural resource extraction is among the uses allowed in the DR/GR lands, those uses "must be compatible with maintaining surface and groundwater levels at their historic levels." There were issues, at the public hearing, relating to the interpretation of this requirement, as no one - Staff, Applicant, County Attorney - seemed to know exactly what was intended by the term "historic levels."

Applicant asserted the intent was to ensure the mining operation did not draw down the water levels below what was already existing in the area, even though everyone agreed that the extreme ditching by the agricultural operations had clearly dropped the water levels in the areas surrounding the agricultural operations. They argued that the mine would be a more environmentally sensitive use than the agricultural uses, because it would not be pumping water out of the aquifer to irrigate crop fields. Instead, the excavation would be "storing" water, making it available to the surrounding area in time of drought or other need.

They reported that the adjacent mine (Westwind Mine) had only dropped the water level by a couple of inches, compared to the drop in feet resulting from the agricultural pumping. They could not be certain whether the other existing mines in the DR/GR or the wellfields have also caused a drop in the water levels in this area or the entire DR/GR region, but Applicant did not believe that such a drop from those other uses would actually affect the water tables in this area of the DR/GR. However, evidence was provided by County Staff that the natural fluctuation, in the dry versus wet water tables in this area alone in the 1970s, was between 3.0 and 3.5 feet. Now, however, with the advent of the agricultural and mining uses, that "natural" fluctuation is being recorded between 6 to 6.5 feet - about double what the fluctuation had been 30 years ago. (*Horvath, Transcript 16, pages 54-55*)

County Zoning Staff seemed to agree with Applicant's "interpretation," and indicated that, without further study of the area, there was insufficient information on the "historic" (pre-agriculture) water levels and flow patterns to use that as a basis for calculating the impacts. They thought this information might be forthcoming in the current study being made of the DR/GR or that County Staff might get some of the information during the development review stage of the zoning process. However, since both those instances would occur later in the zoning/development process, the information was not available for use at this time and they were comfortable imposing conditions that would assure, at least, the existing conditions would be maintained in the area. In other words, Applicant wanted to merely maintain the "status quo" for the area, instead of trying to improve the situation, and Staff was amenable to that situation, unless/until a need was shown for the establishment of a higher standard for ensuring water quantity.

Dr. Lee, on the other hand, believed that the County should be reviewing this situation from a "region" wide basis - looking at the pre-agricultural surface flow patterns and the region wide impacts that have resulted from the existing agricultural and mining uses, and future mining uses. (*Lee, Transcript 14, pages 70-72; Transcript 16, pages 88-90*) He explained that Applicant's proposal to berm around the entire mining site will create additional surface flow problems on properties "downstream" from the site. In order to understand the magnitude of those impacts, the County must understand the original flow patterns in the region and the impacts resulting from the ditching and existing mining uses.

The members of the public agreed with that position, arguing that the mining operation should be held to the water levels and flow patterns that existed before the agricultural operations changed everything. They argued that the mine must be required to bring the water levels in the area up closer to the pre-agricultural levels. Unless really stringent preventive or restorative measures are taken, each mine that is approved in this area will compound the drawdown effect on the DR/GR water tables. Even if each mine is only going to have a minimal drawdown effect - 3+ inches - on the water table, the impacts of each new mine have to be combined with (added to) the previously existing impacts before Staff can fully comprehend the total drawdown result and its potential effect on the DR/GR functions and lands.

The current groundwater level (water table) was shown to drop 5 to 6 feet in the dry season and to rise that amount in the wet season. However, the ecologists stressed that anything causing the water table in natural wetlands to drop more than 6 inches below the root zone of the wetland plants for prolonged/sustained periods of time will affect the viability of the groundcover and understory vegetation in those wetlands. It was acknowledged that wetlands can survive typical dry seasons, but the prolonged loss of water at the roots of those plants will eventually cause that vegetation to die and transitional vegetation (i.e., exotics) will take over. If that occurs, the wetland vegetation and function are ultimately lost.

The loss of the wetlands and the slough areas have a dramatic effect on the immediately surrounding lands, as well as an adverse effect on the rivers and estuaries in this area of Florida. The historic patterns of run-off from the sloughs and this area reveal this area provided fresh water to the Estero Bay and the Corkscrew Swamp Sanctuary. The loss of those waters will affect the estuaries in Estero Bay and the wood stork rookeries, among other habitats and wildlife, in the Corkscrew Swamp Sanctuary.

The Hearing Examiner agrees with Dr. Lee that, at the very least, the proposed mine should study the flow patterns that existed in the area before the ditching was commenced by the agricultural operations. She understands from testimony received during the hearing that aerial photographs and data from certain monitoring wells and stations in the DR/GR area could be used to reconstruct the water conditions existing in this area in the mid- to late 1970s, before the Lee Plan Policy was adopted. Staff could use that data in the creation of conditions to reinstate the older flow patterns and water levels, instead of recommending conditions that will just allow Applicant to preserve the water quantity "status quo."

She points out that, when Dr. Lee was asked specifically by the Applicant about the ability to design a mine that will have a "net benefit" to both the water quantity and quality, he responded that it was "possible," if he had all the relevant data. However - "the thing is that we (County) don't have actual site-specific quantification of interaction between groundwater and surface water. We have general numbers being cited here . . ." (*Lee, Transcript 16, pages 105-108*) He went on to state they also needed "actual monitoring for the mining, actual setback distance, pollution prevention plan" before he would be able to determine which activity - excavation/lake system versus agricultural system - would result in "less water quality concerns." (*Id, pages 106-111*)

The undersigned Hearing Examiner's greatest concerns in this case stem from statements made by both Staff's and Applicant's experts that they were not sure whether the pages and pages of conditions are adequate to protect the DR/GR lands and functions. First, she is concerned that any approval of this request may "lock" Lee County into a development pattern that may prove to be inconsistent and incompatible with the intent of the DR/GR. See Staff's opinion that this mine is appropriate at this location because there is already a mine out there, which gives rise to the "domino" or "precedent" argument that the County would be prohibited from denying similar uses in the same area.

Second, she is concerned that, with all the unknowns about this area, the approval of this mining operation could have unpredictable and irrevocable long-term or future impacts on the DR/GR functions, which could jeopardize the County's future water supply. It is her opinion that the approval of this mine should be based on a full and complete understanding of every aspect of the existing conditions, as well as an understanding of every possible impact and its future ramifications.

Lastly, she points out to the BOCC that the Lee Plan and the Land Development Code require all these issues be reviewed and addressed during the zoning stage, so Staff can determine and ensure consistency with the Lee Plan and compatibility with other uses. Once the request has been approved and moves to development review for its development approvals, changes in the existing circumstances or changes in the proposed conditions of approval will not be reviewed for consistency with the intent of the Lee Plan nor for compatibility with the other uses in this area. In addition, neither the BOCC nor the public will have a chance to review the new conditions or changed circumstances to determine if the project should still be approved.

For all the reasons and the conclusions discussed above, the Hearing Examiner is recommending that the BOCC deny this request, without prejudice, which will allow Applicant to bring the rezoning request again within one year. She recommends that the BOCC direct Staff and Applicant to perform more in-depth reviews of the subsurface materials, underground water flow patterns, and surface drainage patterns, during the re-application time frame. That will give Staff the information needed to make a full and accurate assessment of the existing water quantity and quality conditions on this property and in the DR/GR lands.

BACKGROUND

The subject property is located approximately seven miles east of the Alico Road/Corkscrew Road intersection, and about two miles west of the Lee/Collier County line. Large scale agricultural enterprises and scattered large residential uses (ranchettes) have been the two prevalent uses located in the area stretching between those intersections for many years. Many of the ranchettes are clustered in "communities" and "neighborhoods" on side roads, while others have driveways directly onto Corkscrew Road. Residential and agricultural uses have co-existed in the area from the 1950 or '60s, but heightened interest in the area for rural residential uses began to occur in the late 1980s and early 1990s.

Until 1994, Corkscrew Road was an unpaved road, extending eastward from its intersection with Alico Road to its intersection with State Road 82. The heaviest traffic using that dirt road were the agricultural trucks and farm equipment used in the seasonal crop production. Parents had to drive their children to the paved section to catch the school bus, as school buses were not allowed to travel over the unpaved portion of Corkscrew Road.

Until 1999, the subject property and the adjacent 602+-acre parcel (now Westwind Mine) were a combined agricultural parcel. That 860-acre grove was approved for 77 high capacity wells (6 million gallons per day) for irrigating the grove. The subject property contained 26 of those wells, which will no longer be used, if the mine is approved, thereby having less water quantity impacts on the area than did the previous agricultural uses. Applicant conceded that the crop production on the subject property had ceased years ago, but was uncertain on how long the subject property has been used for grazing, which does not require irrigation or massive water withdrawal from the aquifers.

In 1999, the 602+-acre Westwind Mine parcel was divided from that 860-acre parcel and approved as a fill dirt mine. However, in or around 2002, that mine expanded to the mining of rock, which is now an ongoing activity. The subject property has been most recently used for cattle grazing, but once contained a citrus and specialty fruit grove. It and the surrounding lands to the north and east have been ditched and drained over the years as part of the area's agricultural operations. Deep ditches run along the north and east boundaries of the

subject property and operate to funnel the surface water and irrigation run-off to the south, and then to the east toward the Corkscrew Swamp Sanctuary in nearby Collier County.

There are three natural wetlands on the site, two of which extend well into the site. These wetlands were once part of the older areawide slough system that traversed the property from the northeast to the southwest. When the agricultural uses commenced in this area, the flow patterns of the slough systems were dramatically altered. A very small wetland (1.88 acres) occupies the northwest corner of the site; a much larger, teardrop shaped, wetland (21.46 acres) lies in the northeast corner of the site; and a 4.43-acre wetland lies on the south boundary of the site, adjacent to Corkscrew Road. Each wetland was connected into an off-site slough or wetland system until the agricultural drainage ditches were dug, which cut them off from their historical water source.¹ The southwestern and northwestern wetlands have been greatly affected by the loss of surface flow waters, while the northeastern wetland has suffered some damage, but none to the extent of the other two wetlands.

As part of the mining plan, Applicant will preserve the three wetlands, but will also ditch around the wetlands, and the "new" ditches (aka recharge trenches) will be inundated with water to keep the water levels adjacent to the wetlands higher than the water level in the excavation or on the adjacent properties. The higher water level in the trenches is to keep the waters of the wetlands from being drawn down into the excavation or into the very deep perimeter, agricultural ditches. Applicant asserted that recharge trenches have been used in other mines and excavations in Lee County, and are to ensure the continuing viability of these wetlands.

A protected species survey was performed on the site and no Lee County listed species were found to inhabit it. It was noted that the wetlands were appropriate foraging habitats for wading birds, particularly the wood stork. Applicant has agreed to construct, as part of the reclamation plan, a 15.69-acre littoral area between the northern two wetlands, and a 4.98-acre littoral area between the northeast wetland and the northeast corner of the site. (Applicant's Exhibit 5) These large littoral zones will provide foraging and water for the local wildlife, and will improve the excavation's water quality by filtering out nutrients and possible contaminants as the surface water flow across them into the excavation. Applicant believed that the littoral zones, with their higher ground level, will also help protect the water levels in the two northern wetlands.

The site lies within the US Fish and Wildlife Service's (USFWS) panther consultation area. If the mine is approved, the USFWS will have to review the proposed project for impacts on the Florida panther before a development order and mining permit can be issued by Lee County.

The MCP reveals that 71.17 acres of open space would be provided on the subject property, of which almost 28 acres (wetlands) will be indigenous preserve. Applicant has proposed a 100-foot-wide buffer/perimeter setback on the north, east and west sides of the site. Portions of that buffer area will count toward the open space requirement and would provide a wildlife corridor around the 241.35-acre excavated lake.

¹ During the site visit, the Hearing Examiner observed that the drainage ditches ranged from a swale depth (18 to 24 inches) to ditches 8 to 10 feet in depth and 15 to 20 feet in width. There was water standing in some of the deeper ditches, but none in ditches that were less than 6 feet deep. That was an indication that the current water table on the subject property is at or below a depth of 5 to 6 feet, due to the drought and other conditions in this area.

Applicant initially requested approval for a 40-foot deep fill dirt mine, but the scattered soil borings revealed the fill dirt does not exceed a 20-foot depth anywhere on the site. Cap rock (isolated limestone "rocks") are scattered throughout the site between the depths of five and 20 feet, and consistent limestone formations were found at depths ranging from 20 to 40 feet below the surface. Based on that information, Staff determined that the requested 40-foot depth was not reasonable, and restricted the mine depth to 20 feet. Applicant agreed to the shallower depth.

Applicant's mining plan will consist of five 2-year phases, in which an anticipated 9.6+ million cubic yards of fill dirt will be removed from the site. Mining would commence in the northern portion and then move southward toward Corkscrew Road. The proposed Master Concept Plan (MCP) provides an excavation setback of 100 feet from the east, west and north perimeters, and a 250-foot setback from Corkscrew Road. Applicant proposed installing a 12-foot-high berm, with plantings, within that 250-foot setback to screen the mining operation from the area's residents and the travelers using Corkscrew Road. (County Environmental Staff objected to the berm, asserting that the location of the berm will force wildlife, crossing the site, to run down it and straight into Corkscrew Road traffic. Several panthers have already died recently along Corkscrew Road, and they were reluctant to "set the stage" for more deaths.)

Water management berms, 2- to 3-foot in height, would encircle the property on three sides, and Applicant does not intend to discharge any waters from the site. The 241+-acre excavation will allow them to "store" their rainfall and any waters that were historically flowing across the site. They asserted that storing the water onsite would prevent any downstream drainage problems - particularly to the properties to the south and southeast, especially the Corkscrew Swamp Sanctuary.

The single access is depicted in the southwest corner of the site. Over the 10-year life of the mine, an estimated 414 daily truck trips would be added to the existing traffic on Corkscrew Road. Applicant conceded, however, that was an average number of trips, as the actual number would be controlled by the demand for the fill dirt; some days there may be less than 414 trips, while other days there could be considerably more than that number. They calculated that 414 trips results in about 34 trucks per hour - or about 1.72 trucks per minute - (over a 6-day week and a 12-hour day) on Corkscrew Road.

Available capacity, for concurrency purposes, is only calculated on the peak season, peak hour figures, and only 64 of the 414 trips are anticipated during the peak season peak hour. Applicant determined that Corkscrew Road - between State Road 82 and Alico Road extension - will operate at a peak season peak hour level of service (LOS) "D," with the mine's projected traffic. LOS "D" is an acceptable LOS under the Lee Plan provisions.

Applicant dismissed the public's complaints about the aggressive, discourteous and intimidating driving habits of the truck drivers, by pointing out that only 153 accidents were recorded on Corkscrew Road between the Westwind Mine and I-75, between 2003 and 2006. (The Westwind Mine began operations in or around the year 2000.) Passenger cars accounted for 85 percent (131) of those accidents, and trucks accounted for 15 percent (23). They further broke down those numbers to reveal that those accidents involved: 32 (21 percent) single vehicle accidents; 89 (58 percent) passenger cars; and 9 (6 percent) trucks. (*Banks, Transcript 15, pages 117-118*)

Applicant then compared those statistics to "national" and state statistics involving car and truck accidents, finding:

	<u>Car</u>	<u>Truck</u>
National	88 percent	12 percent
State	95 percent	5 percent
Corkscrew Road	85 percent	15 percent

Although they asserted the percentage of accidents involving trucks was consistent with the state and national averages, the Hearing Examiner points out that the percentage of truck accidents on Corkscrew Road is three times higher than the percentage of truck accidents statewide. (*Id*, pages 120-122)

In an attempt to rebut the public's claims that the truck drivers were too aggressive and too careless, Applicant's expert provided the "nationwide" study of seven other states that indicated fewer accidents involved big trucks than involved passenger vehicles - specifically 88 percent involved cars, 12 percent involved trucks. Given that statistic, they determined that the big truck drivers were safer drivers than drivers of passenger vehicles. (*Id*, pages 122-127)

Applicant also concluded that there was no safety risk or inherent incompatibility between the truck traffic and passenger vehicles on Corkscrew Road. They asserted that it was not the type of vehicle but the type of driver that poses the threat. Truck drivers have more extensive training and will suffer a higher financial loss than a passenger car driver. Thus, in their opinion, the truck drivers are not the real threat on Corkscrew Road; the residents should be more concerned about other passenger car drivers. (*Id*, pages 122-127).

The Hearing Examiner reviewed the complete published study utilized by Applicant in reaching those conclusions, and found that the study also investigated the "cause" of the accident. That study revealed that most truck accidents were caused by the aggressive driving habits of the truck driver, or the driver's failure to drive in accordance with the conditions. (*Applicant's Exhibit 36*) Specifically, Table 6 on page 12 of that Exhibit ranked the highest "causes" for the truck accidents as: (*Id*, page 12)

31%	Over the lane line or off the road
28.6%	Loss of Control (traveling too fast for conditions, other)
21.7%	Other motor vehicles in travel lane

Table 7 set out that 87.2 percent of those truck accidents were attributed to the fault of the truck driver, citing the following "critical reasons" for the accident: (*Applicant's Exhibit 36*, pages 12-13) (emphasis added by Hearing Examiner)

11.6%	Driver - Non-performance (driver fell asleep, was physically impaired or disabled by heart attack or seizure)
28.4%	Driver - Recognition (driver did not recognize situation - not paying proper attention, distracted by something in or out of the truck, or failed to adequately observe the situation)
38.0%	Driver - Decision (drove too fast for conditions, misjudged speed of other vehicles, followed other vehicles too closely or made false assumptions about other driver's actions)
9.2%	Driver - Performance (driver froze, overcompensated or exercised poor directional control)

She points out that the actions receiving the highest percentages in both those tables were the very actions that the residents and public were experiencing with truck traffic on Corkscrew Road. The public recognized that they had no control over and no way to avoid the above-described drivers' actions that can ultimately result in an accident. For that reason, they believed that there was already an inherent safety risk with the existing truck traffic on Corkscrew Road and the approval of another mine will significantly increase that risk.

Applicant explained that they would not be blasting, as they had no plans to excavate the limerock. However, they conceded that they would like to export any of the limestone cap rock found when they were digging the fill dirt. They would crush the rock with a portable/mobile crusher, which would not create much noise or dust on the adjacent properties, and send it out in dump trucks, just like the fill dirt. They likened their operation to that of the construction of a 20-foot deep water management lake in a planned development, which is an accepted activity associated with almost any land development. The only difference between this use and the construction of an onsite water management lake was the export of the fill dirt.

Three Deviations were initially requested, but two (Deviations 1 and 3) were withdrawn at the public hearing. The remaining Deviation was requesting an excavation bank slope at a 4:1 ratio, instead of the required 6:1 ratio. They explained that would help with the planting requirements along the shoreline of the lake, as well as with the function of the large littoral areas abutting the northern wetlands.

In brief, Applicant argued that their request, as conditioned by Staff, was consistent with the intent and provisions of the Lee Plan and the Land Development Code. They asserted:

- 1) That the mining activity was consistent with the intent and provisions of the Lee Plan, particularly since the mining activity was a specified use in the DR/GR category;
- 2) That, as conditioned by Staff, the activity would not have any adverse impacts on the residential uses in the area;
- 3) That, as conditioned by Staff, the mining activity would not have any adverse impacts on the existing environmental or ecological features and functions of the DR/GR area;
- 4) That there was adequate and available capacity on Corkscrew Road for their averaged 414 daily trips, and their truck traffic, as conditioned, would not degrade Corkscrew Road below the accepted level of service "E"; and
- 5) That the mine will result in less water quantity impacts than the prior (approved) agricultural use, despite the fact that the agricultural operation had ceased on this property many years ago.

Staff recommended approval of the mining operation, with conditions, finding that the request, as conditioned, was consistent with the Lee Plan and the Land Development Code, and would be compatible with the surrounding lower intensity agricultural and residential uses. They found that the mining operation, as conditioned, would not be detrimental nor injurious to the neighborhood or the health, safety and welfare of the residents or general public.

Staff recommended numerous conditions on the approval of this mine that were intended to ensure that the operation would not adversely impact the natural resources and functions of

the DR/GR lands. They conceded that the many of the conditions might not be adequate to achieve that goal at this time. However, they believed, if any of the conditions were proven to be inadequate, those conditions could be modified, later in the review processes, to more fully address the "needs" that are documented in the in-depth study of the site and the area. They conceded that some of the data could have been available, by requiring Applicant to perform more in-depth assessments of the area, before the request was brought before the Hearing Examiner. Once the case was found sufficient, though, Staff was reluctant to re-open it to require more detailed studies and data about the site to enable them to make an more in-depth analysis. Zoning Staff believed that anything they missed at the zoning level might be caught during the development order review process, when Applicant would be required to supply more specific information.

Further, Staff intimated that, because of the 20-foot depth and this mine's distance from the wellfields, this case did not seem to pose as much a risk to the DR/GR goals and wellfields as did several of the other pending, much larger, much deeper mining requests. For that reason, they felt justified in this request getting a more cursory review up front, anticipating that the potential impacts would be discovered during the development order stage. They stressed that impacts from this mine would be small in comparison to the potential impacts associated with the deeper, larger rock mines being proposed elsewhere in the DR/GR, and they believed it was more important to concentrate their full attention and efforts on those more potentially harmful mines.

Staff also found that the truck traffic from this mining operation would be compatible with the residential uses in the area east of Alico Road, but would be problematic once it passed the Alico Road extension. They found that the area west of Alico Road extension was predominantly residential and any truck traffic going through that area would be contrary to Policy 7.1.9. They acknowledged the residential "communities" in the area east of Alico Road extension, but did not deem them to qualify as "predominantly residential areas" requiring the protections given by Policy 7.1.9.

Applicant's traffic would not lower the level of service on Corkscrew Road to an unacceptable level, which was consistent with the intent of the Lee Plan. However, Staff conceded that the mining "truck traffic on Corkscrew Road will be exacerbated" and that there would be traffic impacts on the area's residents, as well as on other residential areas bordering Corkscrew Road. (*Staff Report, pages 14, 17 and 19*)

They pointed out that this mine will put an average of 414 two-way daily trips on Corkscrew Road, "thereby increasing the potential for truck and passenger vehicle conflicts." (*Id, page 17*) They acknowledged, in the public hearing, that the County's conditions attempting to route truck traffic away from west Corkscrew Road have been unenforceable by Lee County, as is the prevention of trucks from parking on the rights-of-way or on the road waiting to get into the mine. (*Block, Transcript 5, Pages 109 - 112, 148-158; Transcript 7, pages 36-38*) They admitted that they did not know of any enforceable conditions that would address the traffic issues, which was why Applicant volunteered to pay for part-time patrols of Corkscrew Road by off-duty deputies to enforce the traffic laws and protect the other drivers sharing the road with the trucks.

Public input was intense and varied, being received from residents in the immediate area of the mine, residents in other areas of Estero, and environmentalists striving to protect the Corkscrew Swamp Sanctuary, Estero Bay estuaries, and other protected areas including the nearby mitigation lands, the habitat and foraging range of the Florida panther and black bear.

The public presentations, in a nutshell, included the following arguments and allegations that: (not ranked in any specific order of importance)

1) The County's zoning process was too narrow, as it only allowed Staff and the Hearing Examiners to look at each individual request, instead of being allowed to look at the "big picture" - particularly the effect the proposed use would have when "combined" with the existing and pending uses in the area.

2) The BOCC should not allow any zonings - particularly mines - in the DR/GR area until they have completed the in-depth studies of the area and have a good basic understanding of the current conditions and circumstances, and the potential effects the new uses will have on the area.

3) The mines will leave gaping "holes full of water" throughout the DR/GR area, which will destroy the natural beauty and bounty of the area, and is sure to have unplanned impacts on wildlife and habitats that exceed the boundaries of the DR/GR area.

4) The existing mine fails to comply with County regulations; the new mine will be operated by the same group and will have the same attitude toward compliance as has been shown by the existing one.

5) A mine is an incompatible use in close proximity to residential uses. The existing mine is already creating lots of noise, dirt and problems on Corkscrew Road; the new mine will exacerbate those unhealthy and undesirable conditions and problems.

6) The surrounding residents, and others in Estero, should not have to suffer so that the mine owners can make a fortune sending the dirt elsewhere in Lee County and to other parts of Florida.

7) The request for a 10-year long fill dirt mine is just the beginning. Once the dirt is removed, then the mine will come back for approval to mine the limestone, which will have even greater impacts on the area - larger, noisier equipment, blasting, piles of rock, instead of dirt on Corkscrew Road. The Westwind Mine is a prime example of that action.

8) The area will lose its "rural" character, and the residents will lose the quality of life and lifestyles they moved to the "country" to get, as well as the value of their properties.

9) The truck traffic associated with this new mine will threaten the health, safety and welfare of the residents and their families, and anyone else having to travel on Corkscrew Road.

10) The residents object to the mine operating on weekends and at night, because of the noise, dust and truck traffic that can be heard throughout the entire area.

11) The residents disagreed with Staff's "finding" that this mine is appropriate because there is already a mine out there. They believed that Staff totally ignored the dwelling units that also exist in this area.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

A. That the subject property is designated DR/GR in the Lee Plan and the Applicant's Master Concept Plan does not prove entitlement to this mining request as it does not demonstrate compliance with the intent or provisions of the Lee Plan, the Land Development Code, or other applicable codes or regulations.

B. That the rezoning request will meet or exceed all performance and locational standards set forth for the mining use allowed in the DR/GR area.

C. That the proposed mining use is not consistent with the residential densities or other uses allowed in the DR/GR designation.

D. That the proposed mining use is not compatible with the existing or future residential uses in the surrounding area.

E. That the traffic generated by the mining request will not cause the level of service on Corkscrew Road to fall below LOS "E" and will be served by streets with the capacity to carry traffic it generates. However, the traffic generated by this mining request will cause adverse impacts to the health, safety and welfare of the nearby residents and other travelers having to use Corkscrew Road for access to other parts of Lee County and southwest Florida.

F. That the mining operation is anticipated to have some adverse impacts on the environmentally critical areas and natural resources of the DR/GR area, BUT it is unknown - without more detailed studies and specific data about the subject property and this DR/GR area - whether the conditions suggested by Lee County Staff are adequate to protect those areas and resources or the other uses in the area.

G. That the proposed fill dirt mining operation is allowed in the DR/GR area, provided it is not inconsistent with the purpose and intent of the DR/GR land use category, or incompatible with the surrounding land uses, but, given the many unknowns about the DR/GR area and the mine's potential effect on that area, it is uncertain whether the mining use is appropriate at this location.

H. That - at this time - it is uncertain whether Lee County Staff's recommended conditions to the proposed Master Concept Plan would be sufficient to adequately address the anticipated impacts from the mining operation, or whether they are reasonably related to the impacts anticipated from the proposed development, given the lack of necessary data about the site and the area.

I. That, if approved, the proposed Deviation, as conditioned, would enhance the objective of the DR/GR area by providing foraging areas for wading birds and other wildlife residing in or traversing the DR/GR area.

J. That urban services, as defined in the Lee Plan, are not available, nor are they necessary for the proposed mining use.

VI. LIST OF EXHIBITS:

STAFF'S EXHIBITS

- 1 Electronic Mail from Samuel Lee to Alvin H. Block, with copies to Kim Trebatoski and Anura J. Karuna, regarding the Estero Group IPD, Condition 12A, paragraph replacement (8.5" x 11")

- 2A Large aerial photograph dated January 2005, depicting the operational, proposed, and vacant mines in the surrounding area (color)(36" x 60"), prepared by Lee County G.I.S. on May 18, 2007
- 2B Reduced aerial photograph dated January 2005, depicting the operational, proposed, and vacant mines in the surrounding area (color)(15" x 24"), prepared by Lee County G.I.S. on May 18, 2007
- 2C Version of the January 2005 Aerial photograph (11" x 17")
- 3 Mines East of Alico Road, South of SR-82 and along Corkscrew road, Agricultural Land along Corkscrew Road, multiple pages, (8.5" x 11")
- 4 Resolutions Z-04-47 (Bell Road Mine) and Z90-010 (Fill Dirt), multiple pages (8.5" x 11")
- 5 Aerial photograph dated January 2005 (color)(22" x 34")
- 6 Estero Group IPD Revised Conditions of Approval (Conditions 3d and 4) prepared by Kim Trebatoski (8.5" x 11")
- 7 Crash Rate for Corkscrew Road - Alica Road to Wildcat Drive, prepared by Harry A. Campbell, P.E., PTOE with Lee County Department of Transportation (two-pages)(8.5" x 11")
- 8 Sam Lee Power Point Presentation (hard copy), dated July 25, 2007 (8.5" x 11")
- 9 Lee County Water Table Aquifer Monitor Network Map, dated 10/2002 (color)(8.5" x 11")
- 10 Proposed Language for Condition 12 I. for monitoring of groundwater & surface water for pollutants, and Table for Test Methods (multiple pages)(8.5" x 11")
- 11 Monitoring Well Map & Chart, by ESRI Data & Maps (color)(8.5" x 11")
- 12 Memorandum from Chip Block, dated October 8, 2007, re: Proposed Revised Conditions

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

APPLICANT'S EXHIBITS

- 1 Resume for D. Wayne Arnold, AICP., Director of Planning, Q. Grady Minor & Associates, P.A. (two-pages)[8.5" x 11"]; C. Dean Smith, P.E., Project Engineer, Q. Grady Minor & Associates, P.A. (two-pages)[8.5" x 11"]; Rae Ann Boylan, President Environmental Consultant, Boylan Environmental Consultants, Inc., (one-page)[8.5" x 11"]; Lloyd E. Horvath, P.E., Vice Present and Technical Director, Water Resource Solutions (four-pages)[8.5" x 11"]; Ted B. Treesh, President, TR Transportation Consultants, Inc., (one-page)[8.5" x 11"]

- 2 Applicant's proposed Conditions, dated July 18, 2007 (10 pages)[8.5" x 11"]
[superceded by Applicant's Exhibit 57]
- 3A One large aerial photograph (36" x 84") prepared by Q. Grady Minor & Associates, P.A., dated September 2006 and one large aerial map prepared by Q. Grady Minor & Associates, P.A., dated July 2007 (color)(22" x 34")[two boards]
- 3B One aerial photograph prepared by Q. Grady Minor & Associates, P.A., dated September 2006 and one reduced aerial map prepared by Q. Grady Minor & Associates, P.A., dated July 2007 (color)(11" x 17")
- 4A Large Cover Sheet and Index of Drawings, Master Concept Plan, General Permit Site Plan, Details, and Aerial prepared by Q. Minor & Associates, P.A., dated September 2005 and revised date March 2006 (five-pages)(22" x 34")
- 4B Reduced Cover Sheet and Index of Drawings, Master Concept Plan, General Permit Site Plan, Details, and Aerial prepared by Q. Minor & Associates, P.A., dated September 2005 and revised date March 2006 (five-pages)(11" x 17")
- 5 Conceptual Littoral Zones prepared by Boylan Environmental Consultants, Inc., drawn by B.K.M., November 1, 2006, and revised June 19, 2007 (one-page)(11" x 17")
- 6A Large colored Master Concept Plan prepared by Q. Grady Minor & Associates, P.A., dated September 2005 (22" x 34")[board]
- 6B Reduced colored Master Concept Plan prepared by Q. Grady Minor & Associates, P.A., dated September 2005 (11" x 17")
- 7 Excerpts from Lee Plan (multiple pages)(8.5" x 11")
- 8 Wellfield Protection Areas prepared by Q. Grady Minor & Associates, P.A., dated October 2006 (color)(11" x 17")
- 9 Map 5B Proposed Mitigation/Restoration/Preservation Sites, Appendix A, prepared by the Southwest Florida Regional Planning Council dated February 19, 2004 (color)(11" x 17")
- 10 Land Development Code Sections 34-161 through 34-1681, Excavation Activities (8.5" x 11")
- 11 Resolutions for other mining operations Z-05-088, Z-07-013, Z-02-053, Z-01-016 and Comparison Chart of Hours of Operation (multiple pages)(8.5" x 11")
- 12 Aerial FLUCCS Map prepared by Boylan Environmental Consultants, Inc., drawn by B.K.M. on November 1, 2006, (color)(22" x 34")
- 13 Estero Group IPD Fill Mine WRS Work Assignment (multiple pages)(8.5" x 11")
- 14 Lee County Traffic Counts and Calculations, Table 2A, revised June 2007 (one-page)(8.5" x 11")

- 15 Hearing Examiner Decision for Case 99-04-035.06S 01.01, Corkscrew Mining Ventures, LTD, heard on June 23, 1999 (multiple pages)(8.5" x 11")
- 16 Traffic Impact Analysis for University - West Lakes IPD prepared by Metro Transportation Group, Inc., dated March 3, 2005 (multiple pages)(8.5" x 11")
- 17 Lee County 2007 Concurrency Report (two-pages)(8.5" x 11")
- 18 ~~Reclamation Plan, prepared by Boylan Environmental Consultants, Inc., drawn by B.K.M., on March 10, 2006, and revised on July 3, 2007 (22" x 34")~~ Superseded by October 4, 2007 Reclamation Plan (Applicant's Exhibit 54)
- 19 Impact Analysis - Water Impact Analysis, prepared by Water Resource Solutions, dated June 2007 (8.5"x 11")
- 20 Composite exhibit consisting of Warranty Deeds & Mortgages (multiple pages)
- 21 Dr. Louis Motz, CV
- 22 Dr. Louis Motz Power Point Presentation, dated September 11, 2007 (multiple pages)(hard copy)
- 23 Groundwater Atlas of the United State reference material on Slides 1 through 14, by James Miller, published 1990 (1-pg)(8.5" x 11")
- 24 Dr. Todd C. Rasmussen, PhD, CV
- 25 Dr. Todd C Rasmussen Power Point Presentation (hard copy)(color)(8.5" x 11")
- 26 Lake Cross-section (model)(hand drawn)[24" x 36" board]
- 27 Rae Ann Boylan, with Boylan Environmental, Power Point Presentation (hard copy)(8.5" x 11")
- 28 Ran Ann Boylan - Power Point Presentation (CD)
- 29 a USDA NRCS Jurisdictional Map, FLUCCS Map - King Parcel (8.5" x 11")
b FLUCCS Map - King Parcel, prepared by W. Dexter Bender & Associates, dated April 13, 1999 (24" x 36")
- 30 Lake/Buffer Cross-Section, prepared by Dean Smith (hand-drawn)[24" x 36" board]
- 31 Lee County Administrative Code #AC-11-1 (copy)(8.5" x 11")
- 32 AASHTO excerpts of Geometric Design of Highways & Streets, dated 2004 (8.5" x 11")
- 33 2003 Lee County Official Trafficways Map (color)(11" x 17")
- 34 US Department of Transportation Report to Congress on Large Truck Crash Causation Study (excerpts), dated November 2005 (multiple pages)(8.5" x 11")

- 35 A 2005 US DOT Large Trucks Fatalities Crash Facts (excerpts), dated February 2002 (8.5" x 11")
- B 2005 US DOT Large Trucks Fatalities Crash Facts (full-set), dated February 2002 (8.5" x 11")
- 36 US DOT Report to Congress on Large Truck Crash Causation Study, dated March 2006 (full-set) (8.5" x 11")
- 37 2003 through 2006 Corkscrew Road Accident Location Summary between I-75 and East of Lazy D Farm Road (8.5" x 11")
- 38 Florida Department of Highway Safety Vehicle & Truck Information, and 2004 Florida Crash Statistics (8.5" x 11")
- 39 Average Annual Lake Evaporation Map (Inches), from US Weather Bureau Tech Paper 37, dated 1959 (8.5" x 11")
- 40 Report of Geological Studies of the Runway and Taxi way areas, prepared by Sowers & Dairymple, dated February 23, 1982 (excerpt)(8.5" x 11")
- 41 Lloyd E. Horvath, P. E., Rebuttal (Power Point Presentation)(hard copy)(8.5" x 11")
- 42 LCDOT Corkscrew Road Road Improvement Plan, dated June 13, 1996, prepared by Lee County DOT (54-sheet set)(11" x 17")
- 43 Composite exhibit consisting of Blue Sheet No 20071915 regarding proposed amendments to LDC Chapter 14, pertaining to Wellfield Protection (8.5" x 11")
- 44 Map of Mitigation Lands (24" x 36")
- 45 Excerpt of Randy Cerchie testimony from Estero Group IPD case on September 5, 2007 (8.5" x 11")
- 46 Staff Condition 16 - Limitation on Use of Corkscrew Road (8.5" x 11")(multiple pages)
- 47 Excerpt from Hearing Examiner Recommendation for DCI2000-00057 - Corkscrew Road Mining (8.5" x 11")(multiple pages)
- 48 Copy of Hearing Examiner Recommendation for DCI2004-00019 - West Lakes Excavation, dated December 16, 2005 (8.5" x 11")(multiple pages)
- 49 Composite exhibit consisting of BOCC Blue Sheet Agenda Item 9.A., dated November 14, 2000 (8.5" x 11") (multiple pages)
- 50 Declaratory Statement from Chief Financial Officer for the State of Florida, Alex Sink, dated August 7, 2007 (multiple pages)(8.5" x 11")
- 51 Composite exhibit consisting of Barron vs. Consolidalia, Minerals, DOAH and Brown & Panhandle vs DCA (multiple pages)(8.5" x 11")

- 52 Copy of the Hearing Examiner Recommendation - Schwab Materials - DCI2001-00002 (8.5" x 11")(multiple pages)
- 53 Appendix to the Strategic Mining Report, prepared by Lee County Division of Planning, dated September 30, 2002 (multiple pages)(8.5" x 11")
- 54 Reclamation Plan with legal scale Site Plan, prepared by Boylan Environmental Consultants, Inc., last revised October 4, 2007 (24" x 36")
- 55 Bona Fide Agricultural Use Affidavit and Sketch, dated July 18, 2007 (8.5" x 11")
- 56 Lee Plan Map 3M Airport Mitigation Lands Overlay (11" x 17")
- 57 Large aerial of DR/GR region, depicting distances between mine site and residences (24" x 60"±)(color)
- 58 Letter from Beverly Grady, Esquire, dated October 8, 2007, re: Proposed Revised Conditions

Résumés of Applicant's other consultants are on file with the Hearing Examiner's Office and are incorporated herein.

OTHER EXHIBITS

Michael J. Ciccarone

- 1 Excerpt of Proceedings, direct testimony of Michael Roeder for Case Number DCI2006-00007 - Estero Group IPD, July 19, 2007, prepared by Martina Reporting Services.

Arnold Rosenthal

- 1 Land Development Code Policies 5.1.5, 6.1.4, and 7.1.9

Neal Noethlich

- 1 Testimony by Neal Noethlich of the Friday, July 20, 2007 hearing for Estero Group Mine Application, Case Number DCI2006-00007(three-pages)(8.5" x 11")

Gertrude A. Bray

- 1 List of dates that her home was shaken by blasts from continuous mining operations (two-pages)(8.5" x 11")

Mike Roeder/Tom Hart

- 1 Lee Plan Evaluation & Appraisal Report, Volume 1 of 2, adopted by the Lee County Board of County Commissioners July 7, 1994 (three-pages)(8.5" x 11")
- 2 Strategic Mining, A Report on Mining in Lee County, prepared for Lee County Board of County Commissioners by Lee County Division of Planning, dated September 30, 2002 (multiple pages)(8.5" x 11")

- 3 Permitted and Active Mines in Southern Lee County As of September 18, 2002 (three-pages)(8.5" x 11")
4. Chronology of Corkscrew Road Mining Approvals prepared by Mike Roeder on July 17, 2007 (two-pages)(8.5" x 11")
- 5 Resolution Z-89-8-8-3, dated November 26, 1990 (three-pages)(8.5" x 11")
- 6 Resolution Z-01-046 for Case Number DCI2001-00002 (five-pages)(8.5" x 11")
- 7 May 15, 2006 letter regarding the Sufficiency Response - Estero Group IPD prepared by Beverly Grady of Roetzel & Andress, LPA to Alvin Block (multiple pages)(8.5" x 11")
- 8 Lee County Inventory of Permitted Mine Areas dated February 2005 (multiple pages)(8.5" x 11")
- 9 Staff Report for Case Number DCI2002-00066 - Asa Candler, President Corkscrew Mining & Excavating, Inc., Hearing Dates: September 10 and 11, 2003 (multiple pages)(8.5" x 11")
- 10 Traffic County Report 2006 prepared by Lee County Department of Transportation dated January 2006 (multiple pages)(8.5" x 11")
- 11 Excerpt from Lee Plan policies (multiple pages)(8.5" x 11")
- 12 Table of Anticipated Petroleum Storage (one page)(8.5" x 11")
- 13 Excerpt of Alvin Chip Block Testimony (four pages)(8.5" x 11")

Kevin Hill

- 1 Photographs of Kevin Hill's property date September 1988 (two-pages)(8.5" x 11")
- 2 Photographs of trucks, wildlife, etc. (various photographs)(4" x 6")
- 3 Power Point Presentation (hard copy & CD)

Sydney T. Bacchus, Ph D.

- 1 Resume for Sydney T. Bacchus, PH.D. (multiple pages)(8.5" x 11")
- 2 Article regarding the Nonmechanical dewatering of the regional Floridan aquifer system from the Geological Society of America prepared by Sydney T. Bacchus, PH.D., dated 2006 (multiple pages)(8.5" x 11")
- 3 CD of Judge Hoeverler, Miami Dade, Lake belt Ruling, dated July 13, 2007
- 4 Article from the National Wetlands Newsletter, Volume 29, no. 1, dated January-February 2007, regarding More Inconvenient Truths: Wildfires and Wetlands, SWANCC and Rapanos (multiple pages)(8.5" x 11")

- 5 Power Point presentation regarding the Environmental Impacts to the Corkscrew Regional Ecosystem Watershed from Mining prepared by Sydney T. Bacchus, PH.D. (Color)(8.5" x 11")
- 6 Errata Sheet for Testimony (multiple pages)(8.5" x 11")
- 7 List of Previous Hearings & Cases, with backup documentation (8.5" x 11")
- 8 SE Lee County DR/GR Flowways Map, dated July 2, 2007 (color)(8.5" x 11")
- 9 Aerial photograph by Google (color)(8.5" x 11")
- 10 Florida Department of Environmental Protection, Florida Sinkhole Index by Steven Spencer & Ed Lane (1-page), dated 1995 (8.5" x 11")
- 11 Sinkhole Report/SW Florida Airport Website (excerpt) (8.5" x 11")
- 12 Chapter 19 Article regarding Karstic Aquifers, CRC Press, 1995 (8.5" x 11")
- 13 USGS Simulation of Advective Flow under Steady State & Transient Recharge Conditions, by Donald Walter & John Masterson, Report #03-4053 (8.5" x 11")
- 14 USGS Maps for Fort Myers, Alva, Estero & Corkscrew areas (24" x 60")(color)(laminated)

Susan Villani

- 1 Two photographs (color)(22" x 34")[board]

William J. Lytell

- 1 Piece of Pavement (rock)

Payton

- 1 Florida Wildlife Federation composite exhibit consisting of Florida Panther Quick Facts, and highlighted portions of Lee Plan 2006 Codification (8.5" x 11")

Schmidt

- 1 Excerpt from McLane Study regarding DR/GR Lands in SE Lee County, Florida, dated May 2007 (8.5" x 11")
- 2 Graphic on "Average" (8.5" x 11")(1-pg)
- 3 Ladder of Inference (8.5" x 11")
- 4 Excerpt from 1990 Amendments to Lee Plan (8.5" x 11")
- 5 Graphic on Wetlands & Water Conservation

- 6 Excerpt from Alico Road Mine, Alico Mining, Inc., and Briarcliff/Blackhawk, dated March 2003 (8.5" x 11")
- 7 Johnson Engineering Technical Memorandum, dated September 12, 2001
- 8 Bureau of Economic Geology - Carbonate Classification by Vuggy Pore Space (8.5" x 11")
- 9 Rawls Article (draft) - (Page 88 excerpt) regarding Ochopee Limestone in Lee County (8.5" x 11")
- 10 Two photographs of a dead fox in the road (8.5" x 11")
- 11 Photograph of trucks in rain on Corkscrew Road (8.5" x 11")
- 12 Letter from Michael Bray regarding Dump Truck Traffic being generated by Dirt Mining (8.5" x 11")
- 13 Photo of subsidence (8.5" x 11")
- 14 Basics of Karst Hydrogeology - definition of Karst (8.5" x 11")
- 15 Inspection Report for WW Mine on Corkscrew Road, dated August 10, 2007 (multiple pages)(8.5" x 11")
- 16 Westwind Mine Log of Sunday Operations (1-page)(8.5" x 11")
- 17 Power Point Presentation CD & hard copy of photographs on CD
- 18 Two photographs, dated November 2003 (color)(8.5" x 11")
- 19 Aerial photograph of Schmidt Grove, dated April 18, 1990 (24" x 36")
- 20 Aerial photograph (04-18-90) of Schmidt property & surrounding groves

VII. PRESENTATION SUMMARY:

November 8, 2006 hearing:

The Hearing Examiner introduced herself and announced the case. She stated the Applicant has requested an indefinite continuance, which is prohibited in the LDC. Therefore, the Applicant needs to decide on a date for a status hearing to discuss the case progress and set a new hearing date.

The Applicant's representative explained that the purpose of the continuance was to allow them time to work with Staff and the US Fish and Wildlife Service regarding the panther issue. It was their understanding that permits were needed, so they needed time further research and resolve the matter.

After a brief discussion, the hearing participants agreed to continue the case to February 23, 2007 for a status hearing, which was later rescheduled for February 14, 2007. The Hearing Examiner explained that no testimony would be taken and no evidence would be submitted

during the status hearing. They would simply decide on a new hearing date. The hearing was then closed.

February 14, 2007 status hearing:

The Hearing Examiner introduced herself and announced the case. She asked if the Applicant was ready to proceed with a full hearing. The Applicant's representative, unidentified, agreed that they were and stated the case was being scheduled for hearing on July 18, 19, and 20, 2007, and asked that July 24 and 25, 2007 be reserved for this case as well. The Hearing Examiner agreed to the specified hearing dates and closed the hearing.

July 18, 19, 20, 24 & 25, 2007, September 4, 5, 7, 11, 12, 14 & 27, 2007, and October 9, 2007 hearings:

See Official Court Reporter Transcripts (17 Volumes)

August 31, 2007 Special Meeting:

See attached **Exhibit B** - Presentation Summary

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. C. Dean Smith, c/o Q. Grady Minor & Associates, Inc., 3800 Via Del Rey, Bonita Springs, Florida 34134
2. Lloyd Horvath, c/o Water Resource Solutions, 1300 Colonial Boulevard, Fort Myers, Florida 33907
3. Brian Barnes, c/o Water Resource Solutions, 1300 Colonial Boulevard, Fort Myers, Florida 33907
4. Louis Motz, 1223 NW 31st Street, Gainesville, Florida 32605
5. Ted Treesh, c/o TR Transportation Consultants, 13881 Plantation Road, Fort Myers, Florida 33912
6. Rae Ann Boylan, c/o Boylan Environmental Consultants, 11000 Metro Parkway, #4, Fort Myers, Florida 33912
7. Dr. Todd C. Rasmussen (no address provided)
8. Beverly Grady, Roetzel & Andress, 3320 First Street, Fort Myers, Florida 33901
9. D. Wayne Arnold, Q. Grady Minor & Associates, 3800 Via Del Rey, Bonita Springs, 34134

ADDITIONAL COUNTY STAFF:

1. Harry A. Campbell, Lee County Department of Transportation, P. O. Box 398, Fort Myers, Florida 33902
2. Randy Cerchie, Public Works Operation Manager of Construction, Lee County Department of Transportation, P. O. Box 398, Fort Myers, Florida 33902-0398
3. Donna Marie Collins, Assistant County Attorney, P. O. Box 398, Fort Myers, Florida 33902-0398
4. Charlie DeFelice, Development Review Manager, Lee County Division of Development Services, P. O. Box 398, Fort Myers, Florida 33902-0398
5. Andy Getch, Lee County Department of Transportation, P. O. Box 398, Fort Myers, Florida 33902-0398
6. Samuel Lee, Lee County Division of Natural Resources, P. O. Box 398, Fort Myers, Florida 33902-0398
7. Cathy Olson, Lee County Parks & Recreation, 3410 Palm Beach Boulevard, Fort Myers, Florida 33916
8. Tony Pellicer, c/o Lee County Division of Natural Resources, P. O. Box 398, Fort Myers, Florida 33902-0398
9. Robert G. Rentz, Community Development, P. O. Box 398, Fort, Florida 33902-0398
10. Kim Trebatoski, Environmental Sciences, P. O. Box 398, Fort Myers, Florida 33902-0398
11. Lee Werst, c/o Lee County Division of Natural Resources, P. O. Box 398, Fort Myers, Florida 33902-0398

PUBLIC PARTICIPATION:

A. THE FOLLOWING PERSONS TESTIFIED OR SUBMITTED EVIDENCE FOR THE RECORD AT THE HEARING (SEE SECTION VII.):

For:

1. Micahel J. Ciccarone, Esquire, 1515 Broadway Avenue, Florida (attorney for Schwab Industries & Gulf Rock IPD's)

Against:

1. Mary Abramson, 20800 Corkscrew Road, Estero, Florida 33928
2. Marsha Andrasik, 20459 Wildcat Run Drive, Estero, Florida 33928
3. Eugene Atchison, 18423 Fuchsia Road SE, Fort Myers, Florida (1 mile)

4. John Ban 20291 Carter Road, Estero, Florida 33928
5. Nicholas Batos, 9165 Hollow Pine Drive, Bonita Springs, Florida 34135
6. Gertrude A. Bray, 20850 Corkscrew Road, Estero, Florida 33928
7. Michael S. Bray, 20850 Corkscrew Road, Estero, Florida 33928
(3 miles)
8. Sydney T. Bacchus, P. O. Box 174, Athens, Georgia 30603
9. John Carr, P.O. Box 366122, Bonita Springs, Florida 34136
(1 1/4 miles)
10. Gregg Cross, 18401 Glades Farm Road, Estero, Florida 33928
(1.2 miles)
11. Al Covelli, 20459 Wildcat Run Drive, Estero Florida (5 miles)
12. Bill Daberko, 20265 Country Club Drive, Estero, Florida 33928
(5 miles)
13. Phil Douglas, 10304 Cape Roman Road, Bonita Springs, Florida 34135-1712'
14. Don Eslick, 23650 Via Veneto #604, Bonita Springs, Florida 34134
15. John S. Fraioli, 5651 Harborage Drive, Fort Myers, Florida 33908
(3 -4 miles)
16. Lester Gurdin, 11520 Chaplis Lane, Estero, Florida 33928
17. Edward Hanna, 20342 Torre Del Lago, Estero, Florida 33928
(6 miles)
18. Mark Hansen, 20150 Corkscrew Road, Estero, Florida 33928
(1/4 mile)
19. Tom Hart, Esquire, c/o Knott Consoer Ebelini Hart & Swett, 1625 Hendry Street, Fort Myers, Florida 33901 [representing Lorraine Lytell, 26113 Cabana Road, Bonita Springs, Florida 34135, and Wildcat Run Community Association, Inc., 20300 Country Club Drive, Estero, Florida 33928]
20. Lee Hershey, 17650 Corkscrew Road, Estero, Florida 33928
21. Michelle Hershey, 17650 Corkscrew Road, Estero, Florida 33928
22. Janice Hill, 20731 Corkscrew Road, Esterio, Florida 33928
23. Kevin Hill, 20731 Corkscrew Road, Estero, Florida 33928 (1 mile)
24. Robert Klein, 21100 Lazy D Farm Road, Estero, Florida 33928
(2 miles)

25. Cathy Lytell, 18251 Glades Farm Road, Estero, Florida 33928
(3 miles)
26. William J. Lytell, 18251 Glades Farm Road, Estero, Florida 33928
(3 miles)
27. Beverly MacNellis, 22819 Forest Ridge Drive, Estero, Florida 33928
(10 miles)
28. Jane McNew, 8509 Sedonia Circle, Fort Myers, Florida 33967
29. Jack Meeker, 23701 Copperleaf Boulevard, Bonita Springs, Florida 34135
(3 miles)
30. Christy Mounts, 934 Lakeside Drive, Lehigh Acres, Florida 33936
(5 miles)
31. Darrell E. Mounts, 19600 Corkscrew Estates Court, Estero, Florida 33928
(1/4 mile)
32. Jane Mounts, 19600 Corkscrew Estates Court, Estero, Florida 33928
(.50 mile)
33. Jay Newberry, 20340 Corkscrew Road, Estero, Florida 33928
(1 mile)
34. Karen Newberry, 20340 Corkscrew Road, Estero, Florida 33928
(1 mile)
35. Neal Noethlich, 20225 Wildcat Run Drive, Estero, Florida 33928
(10 miles)
36. Nancy Payton, 2590 Golden Gate Parkway, Suite 105, Naples, Florida 34105
37. Ray Pothier, 21034 Oxbow Bend, Estero, Florida 33928
(8-10 miles)
38. Mark S. Preston, 20941 Lazy D Farm Road, Estero, Florida 33928
(1.5 miles)
39. Mike Roeder, c/o Knott Consoer Law Firm, 1625 Hendry Street, Fort Myers, Florida
33901
40. Theresa Rohrman, 19090 Burgundy Farms Road, Estero, Florida 33928
(4-5 miles)
41. Arnold Rosenthal, 20981 Andiron Place, Estero, Florida 33928
(8-10 miles)
42. Donald A. Rowe, 9136 Willow Walk, Bonita Springs, Florida 34135
43. Peggy Apgar Schmidt, 5640 Mackaboy Court, Fort Myers, Florida 33905

44. Dave Summers, 20720 Six Ls Farm Road, Estero, Florida 33928
45. John Ruehl, 11451 Pembroke Run, Estero, Florida 33928 (3 miles)
46. Dave Urich,(Responsible Growth Management Coalition), 3919 McKinley Avenue, Fort Myers, Florida 33901
47. Cedric Valentin, 21230 Lazy D Farm Road, Estero, Florida 33928 (.50 mile)
48. Susan Villani, 17600 Corkscrew Road Estero, Florida 33928 (5 miles)
49. Donald Vilnius, 22199 Natures Cove Court, Estero, Florida 33928 (12 miles)
50. Paulette C. Weathers, 17550 Corkscrew Road, Estero, Florida 33928 (2 miles)
51. Robert Wiley, 18100 Glades Farm Road, Estero, Florida 33928 (2 miles +/-)

General:

1. Brad Cornell, 6600 Tamiami Trail, N#32A, Naples, Florida 34102

B. THE FOLLOWING PERSONS SUBMITTED A LETTER/COMMENT CARD, OR OTHERWISE REQUESTED A COPY OF THE HEARING EXAMINER RECOMMENDATION:

For:

1. Paul Newmeister, Jr., 17233 Capri Drive, Fort Myers, Florida 33967

Against:

1. Noel Abramson, 20800 Corkscrew Road, Estero, Florida 33928
2. Jackie Ban, 20291 Carter Road, Estero, Florida 33928
3. Lynne M. Davis, 20941 Lazy D Farm Road, Estero, Florida 33928
4. Marilyn Edwards, 9240 Spring Run Boulevard, Bonita Springs, Florida 34135
5. Manuel Esayian, 23531 Sandycreek Terrace, #907, Bonita Springs, Florida 34135
6. Philip Finches, 20631 Rookery Drive, Estero, Florida 33928 (6 miles)
7. Teresa K. Fraioli, 5651 Harborage Drive, Fort Myers, Florida 33908
8. Alan Gamenthaler, P. O. Box 852, 21044 Lazy D Farm Road, Estero, Florida 33928
9. Faith Gamenthaler, 21044 Lazy D Farm Road, Estero, Florida 33928

10. Rebecca Hansen, 20150 Corkscrew Road, Estero, Florida 33928
11. Anthony & Joan Holitan, 12601 Katydid Lane, Immokalee, Florida 34142 (1 mile)
12. Jim Lytell, 18301 Glades Farm Road, Estero, Florida 33928
13. Lynn Lytell, 18301 Glades Farm Road, Estero, Florida 33928
(3 miles)
14. Mary Maniscalco, 21040 Lazy D Farm Road, Estero, Florida 33928
15. Richard Maniscalco, 21040 Lazy D Farm Road, Estero, Florida 33928
16. Jim Merrill, 23203 Foxberry Lane, Bonita Springs, Florida 34135 (10 miles)
17. Frank Messana, 9896 Colonial Walk South, Estero, Florida 33928
18. Jeremy Mounts, 4613 29th Street SW, Lehigh Acres, Florida 33973 (5 miles)
19. Joan Morgan, 9553 Liseron Drive, Estero, Florida 33928
20. Blake J. Neuville, 20180 Six L's Farm Road, Estero, Florida 33928
21. Deborah A. Neuville, 20180 Six L's Farm Road, Estero, Florida 33928 (3 miles)
22. Claudia Paskiet, 13200 Pinto Lane, Fort Myers, Florida 33966 (1 mile)
23. Robert Paskiet, 13200 Pinto Lane, Fort Myers, Florida 33966 (1 mile)
24. John R. Philip, P. O. Box 9438, Naples, Florida 34101
25. Arvo Rahe, 19050 Corkscrew Estates, Estero, Florida 33928
(1 mile)
26. Kim Rahe, 19050 Corkscrew Estates, Estero, Florida 33928
(1 mile)
27. David Rohrman, 19090 Burgundy Farms Road, Estero, Florida 33928
(4-5 miles)
28. Richard Schmidt, 5640 Mackaboy Court, Fort Myers, Florida 33905
29. Irvin Weathers, 17550 Corkscrew Road, Estero, Florida 33928
(2 miles)

General:

1. Denes Husty III (dhusty@news-press.com)

IX. LEGAL DESCRIPTION:

See **Exhibit C** (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the Hearing Examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the Hearing Examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

XI. HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

A. This recommendation is made this 4th day of April, 2008. Notice or copies will be forwarded to the offices of the Lee County Board of County Commissioners.

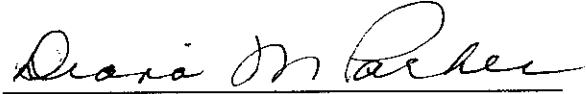
B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

C. The Board of County Commissioners will hold a hearing at which they will consider the record made before the Hearing Examiner. The Department of Community Development will send written notice to all hearing participants of the date of this hearing before the Board of County Commissioners. Only participants, or their representatives, will be allowed to address the Board. The content of all statements by persons addressing the Board shall be strictly limited to the correctness of Findings of Fact or Conclusions of Law contained in the recommendation, or to allege the discovery of relevant new evidence which was not known by the speaker at the time of the earlier hearing before the Hearing Examiner and not otherwise disclosed in the record.

D. The original file containing the original documents used in the hearing before the Hearing Examiner will be brought by the Staff to the hearing before the Board of County Commissioners. Any or all of the documents in the file are available on request at any time to any County Commissioner.

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

A verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.



DIANA M. PARKER
LEE COUNTY HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, Florida 33902-0398
Telephone: 239/479-8100
Facsimile: 239/479-8106

EXHIBIT A
CONDITIONS AND DEVIATIONS
FOR
DCI2006-00007
ESTERO GROUP MINE

A. CONDITIONS:

1. The development of this project must be consistent with the 5-page Master Concept Plan entitled "Estero Group IPD," dated March 2006, submitted during hearing and labeled Applicant's Exhibit 4-B (attached hereto as **Exhibit A-1**), 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 10 years from the date of the approval of this request by the Lee County Board of County Commissioners. Any extension of this maximum length must 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 6:00 PM, Monday through Friday, and 8:00 AM to 12:00 PM (noon) on Saturday for the fill pit operations. Trucks may not enter or leave the site except from 7:00 AM to 6:00 PM, Monday through Friday and from 8:00 AM to 12:00 PM (noon) on Saturday. The mining use may not operate, for any reason, on Sundays or after 6:00 PM (weekdays) and after 12:00 noon (Saturday).

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, but will be used solely as a "fill pit" operation, and is hereby limited as such. As such, **no** blasting is permitted as part of this planned development. In order for this site to be used as a Construction Materials Mining Operation, whether by change of use or change of the statutory definition, an amendment of this planned development must be approved, through a public hearing, 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 with this mining operation

Caretakers residence - limited to one

Entrance gate and gatehouse

Essential Services

Essential Service Facilities, Group I

Fences, Walls

Helipad - 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 - as may be modified by Conditions 3.c. and 3.d.

Excavation Depth/Slope:

Maximum Excavation Depth: The maximum permitted depth of this mining operation is 20 feet or to the limestone or rock layer, or 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:

4:1 (horizontal to vertical) to vertical depth of 4 feet

Structure Setbacks:

Existing Right-of-way:

50 feet

Private Property Line:

50 feet for accessory structures not related directly to processing such as administrative offices, wheel wash, maintenance building, and scale house. As provided for in Land Development Code Section 34-1681(3), any use such as crusher, mixing plant, bin, tank or structure directly involved in the production process must meet the minimum setbacks established in that Section.

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

3. Prior to local development order/Mining Operations Permit (MOP) 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. 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. delineate a minimum 100-foot-wide excavation setback from the property lines and a 200-foot-wide excavation setback from the Corkscrew Road right-of-way; and

d. demonstrate that the mine design has been selected to produce no adverse impacts to existing resources and adjacent properties. During the selection of the design, the Applicant will, among other alternatives, consider compartmentalized mining to achieve no adverse impacts on ground water. A minimum 200-foot setback must be provided to all perimeter and wetland preserves unless, through final site design, modeling and site specific data submitted by the Applicant, it is determined by the Division of Natural Resources and Division of Environmental Science staffs that either increased or decreased setbacks result in no adverse impact to existing resources and adjacent properties. Property setbacks must not be less than 100 feet per the Land Development Code excavation standards; and

e. surface water management system must include (1) an evaluation of the existing agricultural drainage pattern across the site, and (2) evaluation of the pre-agricultural drainage pattern across the site resulting in a surface water management system that is designed to achieve a balance of improved recharge and maintain necessary discharge to enhance and improve off-site impacts subject to the South Florida Water Management District (SFWMD) approval. Prior to the submittal of a development order/MOP, the owner/operator must schedule a pre-application meeting with the SFWMD) and Lee County; and

f. provide an accurate hydric soils map of site and sub-basins with baseline data; and

g. provide surveyed cross sections of all wetlands which contain spot elevations within the farm fields and historic seasonal high water level elevations using natural benchmarks within the wetland preserves.

This information must be submitted to and approved by Lee County prior to the commencement of monitoring.

4. Littoral Shelf Planting Requirements Prior to local development order approval, the landscape and grading plans must include detailed cross-sections of the large littoral shelf design in substantial compliance with the Reclamation Plan dated October 4, 2007. The final design must demonstrate a minimum 100-foot width is provided at a water depth appropriate for woodstork foraging and the inclusion of draw down pools (top soiled 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. The final acreage of the large littoral shelf areas must be based up to an area equivalent to 50 percent of the lake shoreline consisting of the 100-foot-wide littoral shelf.

5. Panther Consultation The Applicant is encouraged to commence Early Consultation with the US Fish and Wildlife Service on the Florida Panther. The owner/operator must provide County Staff with copies of correspondence pertaining to 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. Reclamation The development of this project must be consistent with the Estero Group LTD Reclamation Plan prepared October 4, 2007 and stamped received October 4, 2007.

7. Perimeter Setbacks All perimeter site setbacks must be a minimum of 200 feet unless modified by Condition 3 d.

8. Monitoring Wells (Water Levels)

a. Pre-Mining Conditions An MOP shall be obtained prior to commencement of mining activities. As part of the MOP, the owner must install monitoring wells on the site. The number of and location of these wells will be determined by the Division of Natural Resources staff as part of the MOP review. The owner/operator is encouraged to start the recording of water levels with one hour intervals as soon as practicable to establish existing baseline conditions. During the MOP application process, the owner/operator must provide water level monitoring data that covers a minimum of a wet season and a dry season.

b. Post Issuance of MOP As a condition of the issuance of the MOP, the owner/operator must meet the performance standard conditions set forth on the MOP, and provide appropriate modifications to the design or operation if:

- i. The water levels in the monitor wells deviate from the range approved by the Division of Natural Resources, based upon applicant's numerical model and analysis of historic data; or
- ii. If the hydro periods fail to meet the Condition 11 (b).

9. Interconnection Prohibited 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 such an 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. Annual Reporting As part of the MOP, the mining operation will be required to provide an annual report to the Development Services Division that:

- a. details the areas to be mined, in addition to areas mined in the previous year;
- b. provides the quantity and type of material to be and 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; and
- g. provides wildlife monitoring data

11. Restoration of Surface Water Levels The restoration plan for the mining operation must be designed to maximize the recharge potential for the underground aquifer.

a. Surface water levels during and at the completion of mining will maintain a seasonal high water level elevation, as determined by the Division of Natural Resources' Staff 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.

b. Hydro periods within the full extent of the existing wetlands preserves, as shown on the Master Concept Plan, must be three to five months.

12. Surface Water and Groundwater Monitoring A groundwater monitoring plan must be approved as part of the MOP. 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. Annual reports produced to address groundwater monitoring must be submitted to Natural Resources.

The Groundwater Monitoring Plan must include the following features:

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 groundwater levels and precipitation. After a minimum period of one year of monitoring, this data will be used with the historical conditions and a numerical model approved by the Division of Natural Resources' Staff 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. Additional monitoring of water levels and water quality will be extended 3 years beyond the life of the mining operation if adverse impacts associated with mining, as determined by County Staff, continue to grow beyond the period of mining operation.

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. Sample site identifications will be reviewed and approved by Lee County. 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 must be conducted 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 the most recent edition. Each sampling event must 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 must be collected monthly, pesticide samples quarterly. Sediments must be analyzed for pesticides annually. Groundwater must be monitored quarterly.

e. Water quality data must be reported in, in accordance with FAC 62-160, and submitted to Lee County in prior approved electronic format.

f. Lee County reserves the right to conduct field audits of the sampling events. For numerical input of detection limits see Condition 12.g., below.

Surface Water Parameter Levels:

Parameter	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	Quarterly
Enterococci	Quarterly

Groundwater Parameter Levels:

Parameter	Frequency
pH	Monthly
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

g. Monitoring of groundwater and surface water for pollutants must be conducted prior to commencement of mining activity. If water quality monitoring indicates that groundwater or surface water pollution is present, a monitoring plan outlining remedial action must be designed and implemented prior to mine activation. If pollutants are introduced as a result of mining practices, application of the pollutant and mining practices must cease immediately until there is a mitigation plan approved by Lee County and other appropriate agencies and implemented by the owner/operator. Water wells and surface water samples must be analyzed using EPA method 8021 and FL-PRO with the results provided to Lee County Natural Resources Division on a quarterly basis. Any of the target analytes that have a maximum contaminate level as defined by the State of Florida 62-550, FAC, must have a detection limit less than or equate to the MCL or regulatory detection as listed in Tables 1-6 of Rule 62-550, FAC, as attached hereto as **Exhibit A-2**, and as may be amended from time to time.

h. The water quality monitoring program will be re-evaluated on an annual basis, unless monitoring results reflect that more frequent evaluation is necessary as determined by Division of Natural Resources.

13. Roadway Damage Any damage directly attributable to this mining operation to the improved or unimproved roadways must be repaired by the operator of the mining use, or holder of the MOP.

14. Future Impact Fees/Assessments

a. To mitigate the impact of the mining activity approved herein, the developer/operator will be subject to any duly adopted roads impact or mitigation assessment for mining/excavation uses, provided such fees are adopted and applicable within the duration of the MOP. 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. Nothing in this condition precludes the Applicant's participation in the process of the adoption of the fee or mitigation program.

b. Prior to the implementation by the County of an impact fee or mitigation program set forth in 14.a. above, the owner/operator must be party to an agreement substantially in the form of **Exhibit A-3** providing for any off-duty patrol services by Lee County Sheriff's Department for that portion of Corkscrew Road located east of the Corkscrew/Alico Road intersection to the county line which services will commence upon the date excavation commences on the subject property and will continue for the duration of the excavation. Lee County Division of Community Development has the authority to administratively amend this condition to add other parties to the agreement to share in the cost of the provision of the Sheriff's patrol or increase the level of service or allow for termination of the agreement if the agreement is replaced by an equivalent program as set forth in 14.a. above.

15. Dewatering Prohibited Dewatering (as defined in the Land Development Code) is not a permitted activity within this planned development.

16. DELETED BY HEARING EXAMINER AS BEING UNENFORCEABLE BY LEE COUNTY. [*County's proposal* - 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. Vehicular Wash Down As part of the local development order/MOP 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 MOP application must include plans for the

facility and 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. Placement of Excavated Materials Excavated material must not be placed within 200 feet of any preserve area.

19. Native Trees All general trees required by Section 10-416 (a) of the Land Development Code must be varieties native to southwest Florida and found to be appropriate for this site by the Lee County Division of Environmental Sciences.

20. Accessory Uses All uses, with the exception of excavation - mining, are considered accessory uses and must cease operation when the on-site mining operation ceases to operate.

21. Vehicular and Pedestrian Impacts 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. Lee Plan 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. Pollution Prevention Plan The operator of the mining operation and/or the property owner must prepare and keep on-site a Pollution Prevention Plan. The plan must address any 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. A copy of the Pollution Prevention Plan must be submitted when applying for the MOP.

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 in the form of citrus groves and cattle grazing in existence at the time the application for this project was filed, and as shown on **Exhibit A-4** 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/MOP, 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 for any phase being mined. 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/MOP. Proof as to termination must include of a copy of the request to terminate the tax exemption provided to the Property Appraiser.

25. Fire Safety Prior to approval of an MOP, the owner/operator 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 MOP and must be located on-site prior to beginning the mining operation.

26. Dust Control Water trucks must be used to keep all internal haul roads dust free.

27. Quarterly Report of Truck Trips The mine owner/operator must provide a quarterly report to the Development Services Division detailing the daily number of truck trips entering and leaving the site for every day of operation. The average number of daily truck trips during each quarter cannot exceed the Applicant's Traffic Impact Statement (TIS) calculations of 414 two-way, daily trips. If exceeded, this will be deemed a violation of the zoning approval. Prior to the issuance of the MOP, the owner/operator must establish a

system acceptable to the Department of Community Development for accurate recordation of the daily truck trips entering and leaving the site.

B. DEVIATIONS:

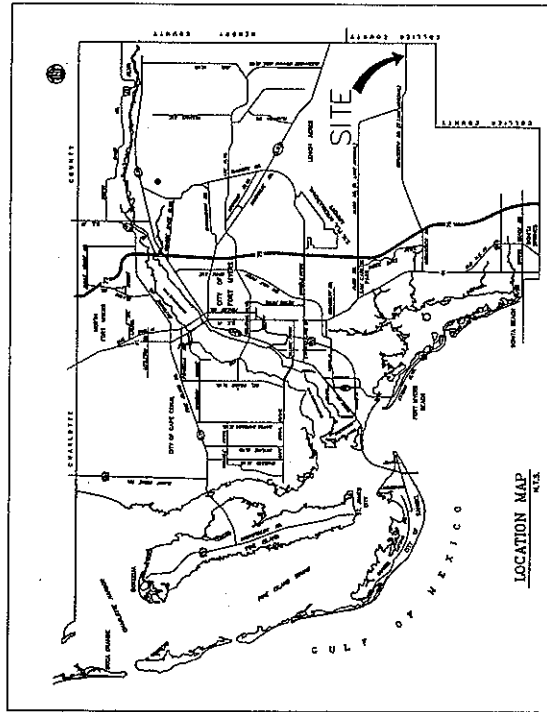
Deviation 1 - Withdrawn at hearing.

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 (4:1) to four feet only if approved by deviation, to allow this slope rather than the required 6 horizontal to 1 vertical (6:1) to a water depth of four (4) feet below the dry season water table. The Hearing Examiner recommends this deviation be **APPROVED, subject to Condition 4.**

Deviation 3 - Withdrawn at hearing.

ESTERO GROUP IPD

LOCATED IN SECTION 23, TOWNSHIP 46, RANGE 27
LEE COUNTY, FLORIDA



DEVELOPER

ESTERO GROUP LTD.
4099 TAMiami TRAIL, SUITE 305
NAPLES, FLORIDA 34103

INDEX OF DRAWINGS

DWG. No.	DESCRIPTION
1.	COVER SHEET AND INDEX OF DRAWINGS
2.	MASTER CONCEPT PLAN
3.	GENERAL PERMIT SITE PLAN
4.	DETAILS
5.	AERIAL

EXHIBIT 6B

DESIGN BY: S.U.
APPROVED BY: S.U.
DATE: SEPTEMBER 2005
REVISION DATE: MARCH 2008
DRAWING NUMBER: 1 of 5

APPLICANT'S EXHIBIT # 40

PREPARED BY
Q. GRADY MINOR AND ASSOCIATES, P.A.
CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS
BONITA SPRINGS, FLORIDA 34134
PHONE: (813) 987-1144 FAX: (813) 987-0075
DISPERSE CONTRACTS OF AFFILIATION TO SOCIAL
SCIENTIFIC CONTRACTS OF AFFILIATION IS BONITI

EXHIBIT A-1

SCHEDULE OF USES

ACCESSORY USES SUCH AS ARE INCLUDING MAINTENANCE, REPAIR, STORAGE, SCALE HOUSE AND OTHER USES RELATED TO THE MINING AND PROCESSING OF MATERIALS (AREA "X", "Y" AND "Z" ONLY)

ADMINISTRATIVE OFFICES (AREA "X", "Y" ONLY)

AGRICULTURAL AND ACCESSORY AGRICULTURAL USES: LIMITED TO EXISTING CATTLE GRAZING.

AUTO REPAIR AND SERVICE, ALL CRUISES LIMITED TO THE MAINTENANCE OPERATIONS VEHICLES AND EQUIPMENT. (AREA "X", "Y" ONLY)

CHARTER'S RESIDENCE (AREA "X", "Y" ONLY)

CARTRIDGE GATES AND GARAGES (ENTRANCE TO AREA "X", "Y" ONLY)

ESSENTIAL SERVICES (AREA "X", "Y" AND "Z" ONLY)

ESSENTIAL SERVICE FACILITIES (LOC SUBSECTION 34-121(C)(1); GROUP 1 SEC. (AREA "X", "Y" AND "Z" ONLY)

EXCAVATION, MINING, WATER RETENTION (MINERAL EXTRACTION ONLY), FENCES, WALLS

HELIPORT (EMERGENCY ONLY, AREA "X", "Y" ONLY)

PARKING LOT, ACCESSORY (AREA "X", "Y" AND "Z" ONLY)

SELF SERVICE FUEL PUMPS: LIMITED TO TWO PUMPS FOR THE SERVICE BUSINESS TO PROVIDE FUEL FOR THEIR OWN FLEET OF VEHICLES AND EQUIPMENT. (AREA "X", "Y" AND "Z" ONLY)

SOILS, IN ACCORDANCE WITH LOC CHAPTER 30 (ENTRANCE TO AREA "X", "Y" STORAGE STORAGE, OTHER (AREA "X", "Y" AND "Z" ONLY)

PROJECT SUMMARY

EXISTING ZONING: AC-2 AGRICULTURE, ROW CROPS, CITRUS
CAPITAL OCCUPATION: RESOURCE, WILDLIFE

PROPOSED ZONING: M1, INDUSTRIAL PLANNED DEVELOPMENT
GROUP ADJAC: 3148 ACRES
GROUP ADJAC: 3148 ACRES
GROUP ADJAC: 3148 ACRES
GROUP ADJAC: 3148 ACRES

PROJECT DEVELOPMENT STANDARDS

MIN. DIMENSIONS:
MIN. LOT AREA: 43,540 SQ. FT.
MIN. LOT WIDTH: 100 FT.
MIN. LOT DEPTH: 100 FT.
MIN. FRONT YARD SETBACK: 200 FT.
MIN. SIDE YARD SETBACK: 100 FT.
MIN. REAR YARD SETBACK: 100 FT.

MIN. EXCAVATION SETBACKS:
MIN. EXCAVATION SETBACK: 50 FT.
MIN. EXCAVATION SETBACK: 50 FT.
MIN. EXCAVATION SETBACK: 50 FT.

MIN. BUILDING SETBACKS:
MIN. BUILDING SETBACK: 50 FT.
MIN. BUILDING SETBACK: 50 FT.
MIN. BUILDING SETBACK: 50 FT.

MIN. ROADWAY SETBACKS:
MIN. ROADWAY SETBACK: 40 FT./2 STORES
MIN. ROADWAY SETBACK: 40 FT./2 STORES
MIN. ROADWAY SETBACK: 40 FT./2 STORES

MIN. TOTAL EXCAVATION AREA: 241.35 ACRES

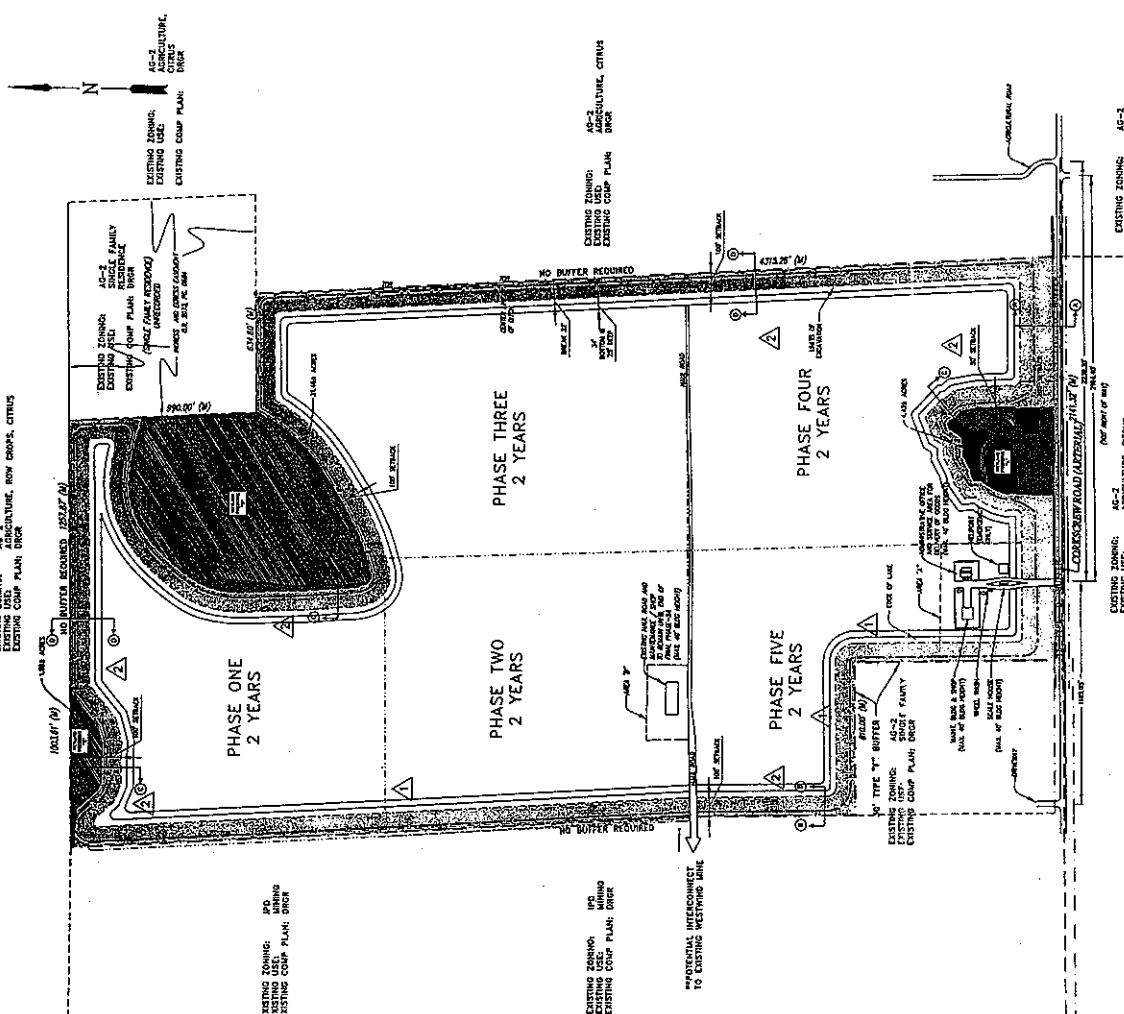
MIN. MAX. BUILDING HEIGHT: 20 FT.
MIN. MAX. BUILDING HEIGHT: 20 FT.
MIN. MAX. BUILDING HEIGHT: 20 FT.

MIN. MAXIMUM DEPTH OF EXCAVATION - TO THE COMPASS LAYER WITH A MAXIMUM NOT TO EXCEED 20 FEET.

MIN. NORTH, WEST AND EAST SITE BOUNDARY MINING SETBACKS: 100 FT.
MIN. SOUTH SITE BOUNDARY MINING SETBACK: 200 FT.

MIN. OPEN SPACE: 83,728 AC.
MIN. OPEN SPACE PROVIDED (20%): 91,418 AC.
MIN. OPEN SPACE PROVIDED (20%): 91,418 AC.
MIN. OPEN SPACE PROVIDED (20%): 91,418 AC.

MIN. HOTEL: SITE CONDITIONS DO NOT CONTAIN SUFFICIENT EXISTING INDEPENDENT NATIVE PLANTS. EXISTING INDEPENDENT NATIVE PLANTS WILL BE PROTECTED PURSUANT TO SECTION 10-165(6)(M) FLA.



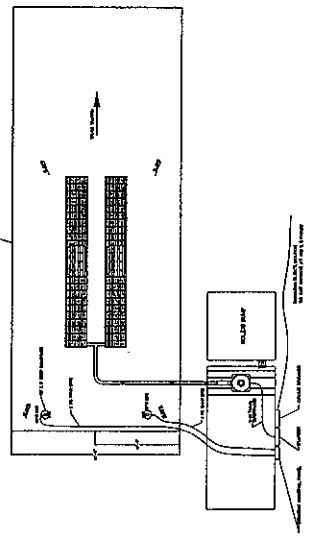
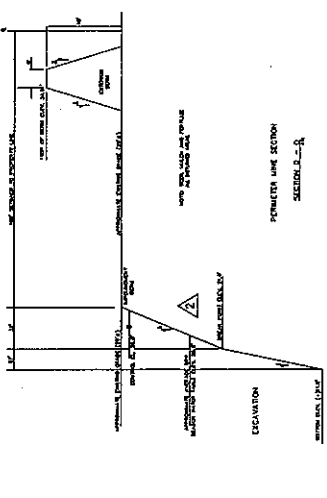
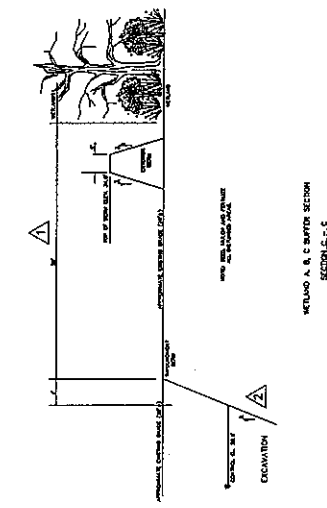
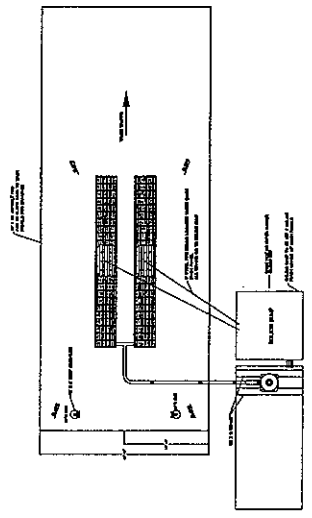
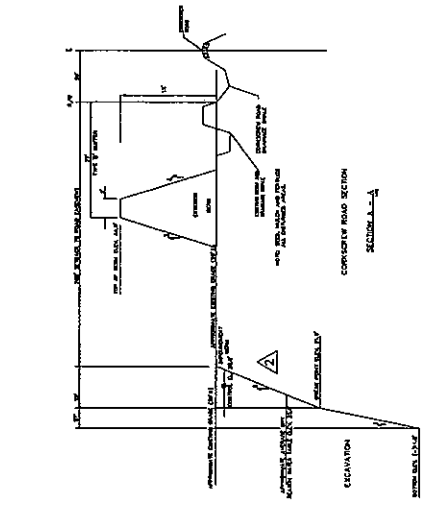
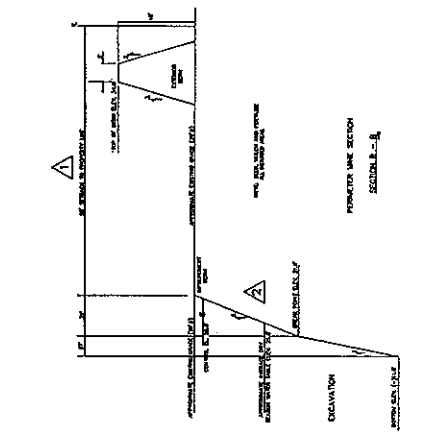
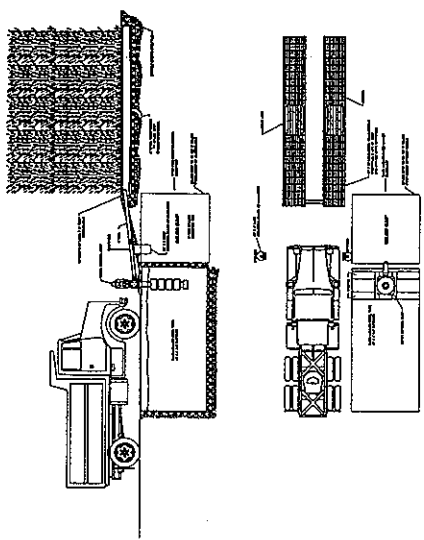
DESIGNED BY: SAJ	ESTERO GROUP IPD
DRAWN BY: SAJ	MASTER CONCEPT PLAN
APPROVED BY: BT	
DATE: SEPTEMBER 2005	FILE NAME: ESTERO
PROJECT NUMBER: 3 OF 5	DRAWING NUMBER: 2 OF 5

Q. CRADY MINOR AND ASSOCIATES, P.A.
CIVIL ENGINEERS & LAND SURVEYORS & PLANNERS
10010 BOYD AVENUE, SUITE 300
BOYD, FLORIDA 34134
PHONE: (239) 847-1844 FAX: (239) 847-8215
WWW.QCRADY.COM

DESIGNED BY: SAJ	ESTERO GROUP IPD
DRAWN BY: SAJ	MASTER CONCEPT PLAN
APPROVED BY: BT	
DATE: SEPTEMBER 2005	FILE NAME: ESTERO
PROJECT NUMBER: 3 OF 5	DRAWING NUMBER: 2 OF 5

DEVELOPER	ESTERO GROUP LTD.
	4099 TAMAMI TRAIL,
	SUITE 305
	NAPLES, FLORIDA 34103
DEVIATION	
SETBACK	
BERM	

LEGEND



WHEEL WASH
N.T.S.

 DEVIATION LEGEND	DEVELOPER ESTERO GROUP, LTD. 4099 TAMiami TRAIL, NAPLES, FLORIDA 34103	DESIGNED BY: SAJ DRAWN BY: SAJ APPROVED: BT JOB CODE: ESDP SCALE: N.T.S.	ESTERO GROUP IPD DETAILS
	DATE: SEPTEMBER 2005 FILE NAME: LEGEND	DRAWING NUMBER: 4 OF 5	Q. GRADY MINOR AND ASSOCIATES, P.A. CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS 2600 W. DEL REY BOHOTA SPRINGS, FLORIDA 34134 PHONE: (888) 847-1144 FAX: (888) 847-0079 PROFESSIONAL CERTIFICATE OF AUTHORIZATION # 00011

Revision	Date	By	Description
1	03/2005	SAJ	PER COUNTY COMMENTS

SCHEDULE OF USES

ACCESSORY USES SUCH AS AND INCLUDING MAINTENANCE, REPAIR, STORAGE, SCALE, INSIDE AND OTHER USES RELATED TO THE MINING, AIR PROCESSING OF MINERALS (AREA "A" AND "B" ONLY)
 ADMINISTRATIVE OFFICES (AREA "A" ONLY)
 AGRICULTURAL AND ACCESSORY AGRICULTURAL USES: LIMITED TO EXISTING CATTLE RAISING
 AND OTHER USES OF THE PROPERTY, SUCH AS THE MAINTENANCE AND REPAIR OF VEHICLES AND EQUIPMENT, (AREA "A" ONLY)
 CONTRACTOR'S RESIDENCE (AREA "A" ONLY)
 CONTRACTOR AND BUILDER'S CROPS LIMITED TO LAND CLEARING AND MINING OPERATIONS CONTIGUOUS TO THE P.O.
 ENTRANCE GATE AND GATEHOUSES (ENTRANCE TO AREA "A" ONLY)
 ESSENTIAL SERVICES (AREA "A" AND "B" ONLY)
 ESSENTIAL SERVICE FACILITIES (SEE SUBSECTION 34-25(2)(1)(c) GROUP 1 SEC. (AREA "A" AND "B" ONLY)
 EXCAVATION, WADING, WATER RETENTION (MINERAL EXTRACTION ONLY), FENCES, WALLS
 HEMPST (EMERGENCY ONLY, AREA "A" ONLY)
 PARKING LOT, ACCESSORY (AREA "A" AND "B" ONLY)
 SELF SERVICE FUEL PUMPS, LIMITED TO TWO PUMPS FOR THE ON-SITE BUSINESS TO PROVIDE FUEL FOR THEIR OWN FLEET OF VEHICLES AND EQUIPMENT (AREA "A" AND "B" ONLY)
 STORAGE: IN ACCORDANCE WITH LDC CHAPTER 30 (ENTRANCE TO AREA "A" ONLY)
 STORAGE STORAGE, OPEN (AREA "A" AND "B" ONLY)

PROJECT SUMMARY
 DISTRICT: INDUSTRIAL
 COUNTY: DADE
 PROJECT: INDUSTRIAL PLANNED DEVELOPMENT
 PROPOSED ZONING: I-1
 STUDY NUMBER(S): 33-14-27-00-00001.0000
 33-14-27-00-00002.0000
 33-14-27-00-00003.0000

PROJECT DEVELOPMENT STANDARDS

MIN. DIMENSIONS:
 MIN. LOT WIDTH: 100 FT.
 MIN. LOT DEPTH: 100 FT.
 MIN. LOT AREA: 10,000 SQ. FT.
 MIN. EXCAVATION SETBACKS:
 NORTH: 100 FT.
 WEST: 100 FT.
 AP-1 RESIDENTIAL:
 MIN. BUILDING SETBACKS:
 FRONT: 25 FT.
 SIDE: 5 FT.
 REAR: 5 FT.
 REAR/GARAGE WATER RETENTION: 5 FT.
 TOTAL EXCAVATION AREA: 241.33 ACRES
 MAX. BUILDING HEIGHT: 45 FT.
 MAX. LOT COVERAGE: 25%
 MAXIMUM DEPTH OF EXCAVATION - TO THE COMPASSING LAYER WITH A MAXIMUM NOT TO EXCEED 20 FEET.
 NORTH, WEST AND EAST SITE BOUNDARY MINING SETBACKS: 100 FT.
 SOUTH SITE BOUNDARY MINING SETBACK: 200 FT.
 OPEN SPACE:
 OPEN SPACE REQUIRED (50%): 63,728 AC.
 OPEN SPACE REQUIRED (10%): 12,746 AC.
 NATIVE OPEN SPACE REQUIRED (10%): 11,918 AC.
 WETLAND "B": 21,742 AC.
 WETLAND "C": 21,742 AC.

NOTE: SITE CONDITIONS DO NOT CURRENTLY PRESENT ENHANCED PROTECTION NEARBY EXISTING INDIVIDUALS WHOSE TREES WILL BE PRESERVED PRIORITY TO SECTION 10-110(2)(B).

DESIGNED BY: SAU
 DRAWN BY: SAU
 APPROVED: BT
 JOB CODE: EOPD
 SCALE: N.T.S.

DEVELOPER:
 ESTERO GROUP, LTD.
 4089 TAMMAM TRAIL,
 NAPLES, FLORIDA 34103

NOTE: AERIAL FLOWN DATE: MARCH 2007

LEGEND

EXHIBIT 6-D
 AERIAL

DATE: SEPTEMBER 2005
 FILE NAME: EOPD07
 DRAWING NUMBER: 5 OF 5

Q. GRADY MINOR AND ASSOCIATES, P.A.
 CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS
 2000 VIA DEL REY
 BONITA SPRINGS, FLORIDA 33434
 PHONE: (239) 947-1144 FAX: (239) 947-9075
 PROFESSIONAL CERTIFICATE OF AUTHORIZATION # 200001

REVISION

Revision	Date	Description	By
1	02/20/06	PER COUNTY COMMENTS	SAU

NOT TO SCALE

DATE: SEPTEMBER 2005

FILE NAME: EOPD07

DRAWING NUMBER: 5 OF 5

LEGEND

EXHIBIT 6-D

AERIAL

DATE: SEPTEMBER 2005

FILE NAME: EOPD07

DRAWING NUMBER: 5 OF 5

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REVISION

Revision	Date	Description	By
1	02/20/06	PER COUNTY COMMENTS	SAU

NOT TO SCALE

DATE: SEPTEMBER 2005

FILE NAME: EOPD07

DRAWING NUMBER: 5 OF 5

LEGEND

EXHIBIT 6-D

AERIAL

DATE: SEPTEMBER 2005

FILE NAME: EOPD07

DRAWING NUMBER: 5 OF 5



Underground Storage Tanks

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EPA Home > Underground Storage Tanks > Cleaning Up UST System Releases > Appendix B-1: Table of U.S. EPA Test Methods for Petroleum Hydrocarbons

Appendix B-1: Table of U.S. EPA Test Methods for Petroleum Hydrocarbons

SW-846 Method	Water/Wastewater Method	Analytes	Primary Equipment	Sample Preparation ¹
4030 ²	n/a	TPHs	Immunoassay	Included in kit
4035 ²	n/a	PAHs	Immunoassay	Included in kit
8015 ³	n/a	Aliphatic and Aromatic Hydrocarbons; Nonhalogenated VOCs	GC/FID	Extraction (SVOCs) ⁴ ; Purge-and-Trap and Headspace (VOCs) ⁴ ; Azeotropic Distillation (Nonhalogenated VOCs) ^{3,4}
8021 ^{3,5}	502.2/602	Aromatic VOCs (not ethers or alcohols)	GC/PID	Purge-and-Trap
8100	n/a	PAHs	GC/FID	Extraction ⁴
8260 ⁶	524.2/624	VOCs	GC/MS	Purge-and-Trap; Static Headspace; Azeotropic Distillation ⁴
8270	525/625	SVOCs	GC/MS	Extraction ⁴
8310	610	PAHs	High Performance Liquid Chromatography (HPLC)	Extraction ⁴
8440 ⁷	418.1 ⁸	TPH	IR Spectrophotometer	Supercritical Fluid Extraction from soils ⁴

¹These are the standard methods of preparation for the corresponding method. They may vary depending upon specific analytical needs.

²Screening method for soils.

³MTBE can be analyzed for with U.S. EPA SW-846 Method 8015 or 8021, however, 8021 has lower detection limits, is subject to less interference in highly contaminated samples, and tends to be more economical by providing BTEX data in the same analysis. Concerns about co-elution with some alkanes requires at least one confirmatory analysis with SW-846 Method 8260 per site.

⁴See Chapter 4 of SW-846 for specific appropriate methods.

⁵8021 replaces 8010 and 8020.

⁶8260 replaces 8240.

⁷This method is similar to 418.1, however, perchlorethane (PCE) is used as an IR solvent instead of Freon-113TM.

⁸418.1 is used extensively, although it is NOT on the list of promulgated methods.

NOTE: This table appears as Table B-1 in Appendix B of *"Expedited Site Assessment Tools for Underground Storage Tank Sites: A Guide for Regulators"* (EPA 510-B-97-001).

EXHIBIT A-2

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3. Each system shall send an informational copy of its consumer confidence report to its county health department if not sent under sub-subparagraph 62-550.824 (3)(e)1.a., F.A.C.

4. Systems regulated by the Florida Public Service Commission (PSC) shall send an informational copy of their consumer confidence reports to the PSC headquarters office no later than the date they mail the reports to the appropriate office of the Department. The address of the PSC headquarters office is: Division of Water and Wastewater, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

5. The font size of all printed text in consumer confidence reports shall be 8 point or larger.

6. If the Department finds that a system's consumer confidence report is not in compliance with the requirements of this section, the Department shall notify the system in writing specifying any changes that must be made. The system shall modify and redistribute its consumer confidence report and resubmit the report to the Department and certify its delivery using Form 62-555.900(19) within 90 days of receipt of the Department's notification.

Specific Authority 403.861(9) FS. Law Implemented 403.853(3), (4), 403.861(9) FS. History—New 9-22-99, Amended 8-1-00, 11-27-01, 4-10-03.

TABLE 1
MAXIMUM CONTAMINANT LEVELS FOR INORGANIC COMPOUNDS

FEDERAL CONTAMINANT ID NUMBER	CONTAMINANT	MCL (mg/L)
1074	Antimony	0.006
1005	Arsenic	0.05 through 12/31/2004 0.010 on and after 01/01/2005
1094	Asbestos	7 MFL
1010	Barium	2
1075	Beryllium	0.004
1015	Cadmium	0.005
1020	Chromium	0.1
1024	Cyanide (as free Cyanide)	0.2
1025	Fluoride	4.0
1030	Lead	0.015
1035	Mercury	0.002
1036	Nickel	0.1
1040	Nitrate	10 (as N)
1041	Nitrite	1 (as N)
	Total Nitrate and Nitrite	10 (as N)
1045	Selenium	0.05
1052	Sodium	160
1085	Thallium	0.002

Abbreviations Used: MCL = maximum contaminant level;
MFL = million fibers per liter (longer than 10 micrometers);
mg/L = milligrams per liter.

TABLE 2
MAXIMUM RESIDUAL DISINFECTANT LEVELS

FEDERAL CONTAMINANT ID NUMBER	DISINFECTANT RESIDUAL	MRDL (mg/L)
1012	Chlorine	4.0 (as Cl ₂)

1006	Chloramines	4.0 (as Cl ₂)
1008	Chlorine Dioxide	0.8 (as ClO ₂)

Abbreviations Used: mg/L = milligrams per liter;
MRDL = maximum residual disinfectant level.

TABLE 3
STAGE 1 MAXIMUM CONTAMINANT LEVELS FOR DISINFECTION BYPRODUCTS

FEDERAL CONTAMINANT ID NUMBER	CONTAMINANT	MCL (mg/L)
2950	Total Trihalomethanes (TTHM)	0.080
2456	Haloacetic Acids (Five) (HAA5)	0.060
1011	Bromate	0.010
1009	Chlorite	1.0

Abbreviations Used: MCL = maximum contaminant level;
mg/L = milligrams per liter.

TABLE 4
MAXIMUM CONTAMINANT LEVELS FOR VOLATILE ORGANIC CONTAMINANTS

FEDERAL CONTAMINANT ID NUMBER	CONTAMINANT & (CAS NUMBER)	MCL (mg/L)
2977	1,1-Dichloroethylene (75-35-4)	0.007
2981	1,1,1-Trichloroethane (71-55-6)	0.2
2985	1,1,2-Trichloroethane (79-00-5)	0.005
2980	1,2-Dichloroethane (107-06-2)	0.003
2983	1,2-Dichloropropane (78-87-5)	0.005
2378	1,2,4-Trichlorobenzene (120-82-1)	0.07
2990	Benzene (71-43-2)	0.001
2982	Carbon tetrachloride (56-23-5)	0.003
2380	cis-1,2-Dichloroethylene (156-59-2)	0.07
2964	Dichloromethane (75-09-2)	0.005
2992	Ethylbenzene (100-41-4)	0.7
2989	Monochlorobenzene (108-90-7)	0.1
2968	o-Dichlorobenzene (95-50-1)	0.6
2969	para-Dichlorobenzene (106-46-7)	0.075
2996	Styrene (100-42-5)	0.1
2987	Tetrachloroethylene (127-18-4)	0.003
2991	Toluene (108-88-3)	1
2979	trans-1,2-Dichloroethylene (156-60-5)	0.1
2984	Trichloroethylene (79-01-6)	0.003
2976	Vinyl chloride (75-01-4)	0.001
2955	Xylenes (total) (1330-20-7)	10

Abbreviations used: CAS Number = Chemical Abstract System Number;
MCL = maximum contaminant level;
mg/L = milligrams per liter.

TABLE 5
 MAXIMUM CONTAMINANT LEVELS FOR SYNTHETIC ORGANIC CONTAMINANTS

FEDERAL CONTAMINANT ID NUMBER	CONTAMINANT & (CAS NUMBER)	MCL (mg/L)	Regulatory Detection Limit (mg/L)
2063	2,3,7,8-TCDD (Dioxin) (1746-01-6)	3×10^{-8}	5×10^{-9}
2105	2,4-D (94-75-7)	0.07	0.0001
2110	2,4,5-TP (Silvex) (93-72-1)	0.05	0.0002
2051	Alachlor (15972-60-8)	0.002	0.0002
2050	Atrazine (1912-24-9)	0.003	0.0001
2306	Benzo(a)pyrene (50-32-8)	0.0002	0.00002
2046	Carbofuran (1563-66-2)	0.04	0.0009
2959	Chlordane (57-74-9)	0.002	0.0002
2031	Dalapon (75-99-0)	0.2	0.001
2035	Di(2-ethylhexyl)adipate (103-23-1)	0.4	0.0006
2039	Di(2-ethylhexyl)phthalate (117-81-7)	0.006	0.0006
2931	Dibromochloropropane (DBCP) (96-12-8)	0.0002	0.00002
2041	Dinoseb (88-85-7)	0.007	0.0002
2032	Diquat (85-00-7)	0.02	0.0004
2033	Endothall (145-73-3)	0.1	0.009
2005	Endrin (72-20-8)	0.002	0.00001
2946	Ethylene dibromide (EDB) (106-93-4)	0.00002	0.00001
2034	Glyphosate (1071-83-6)	0.7	0.006
2065	Heptachlor (76-44-8)	0.0004	0.00004
2067	Heptachlor epoxide (1024-57-3)	0.0002	0.00002
2274	Hexachlorobenzene (118-74-1)	0.001	0.0001
2042	Hexachlorocyclopentadiene (77-47-4)	0.05	0.0001
2010	Lindane (58-89-9)	0.0002	0.00002
2015	Methoxychlor (72-43-5)	0.04	0.0001
2036	Oxamyl (vydate) (23135-22-0)	0.2	0.002
2326	Pentachlorophenol (87-86-5)	0.001	0.00004
2040	Picloram (1918-02-1)	0.5	0.0001
2383	Polychlorinated biphenyls (PCBs)	0.0005	0.0001
2037	Simazine (122-34-9)	0.004	0.00007
2020	Toxaphene (8001-35-2)	0.003	0.001

Abbreviations used: CAS Number = Chemical Abstract System Number;
MCL = maximum contaminant level;
mg/L = milligrams per liter.

NOTE: The Detection Limits listed in this table become effective January 22, 2004.

TABLE 6
SECONDARY DRINKING WATER STANDARDS

FEDERAL CONTAMINANT ID NUMBER	CONTAMINANT	SMCL (mg/L)*
1002	Aluminum	0.2
1017	Chloride	250
1022	Copper	1
1025	Fluoride	2.0
1028	Iron	0.3
1032	Manganese	0.05
1050	Silver	0.1
1055	Sulfate	250
1095	Zinc	5
1905	Color	15 color units
1920	Odor**	3 (threshold odor number)
1925	pH	6.5 - 8.5
1930	Total Dissolved Solids	500
2905	Foaming Agents	0.5

Abbreviations Used: SMCL = maximum contaminant level;
mg/L = milligrams per liter.

* Except color, odor, and pH.

** For purpose of compliance with ground water quality secondary standards, as referenced in Chapter 62-520, F.A.C., levels of ethylbenzene exceeding 30 micrograms per liter, toluene exceeding 40 micrograms per liter, or xylenes exceeding 20 micrograms per liter shall be considered equivalent to exceeding the drinking water secondary standard for odor.

**AGREEMENT APPROVING AND PROVIDING FOR POLICE OFFICERS ON
CORKSCREW ROAD, EAST OF CORKSCREW/ALICO ROAD INTERSECTION**

This Agreement is made and entered into between Estero Group, Ltd., (hereinafter referred to as "Estero") with a mailing address of 4099 Tamiami Trail, Suite 305, Fort Myers, Florida, 34103 and the Lee County Sheriff's Office (hereinafter referred to as "Sheriff"), with a mailing address of 14750 Six Mile Cypress Parkway, S.E., Fort Myers, Florida 33912-4406, collectively, "the Parties" hereto.

WITNESSETH:

WHEREAS, Corkscrew Road is a public road, maintained by Lee County; and

WHEREAS, Section 316.006(3)(a), Florida Statutes gives counties original jurisdiction over all streets and highways located within county boundaries that are not state roads or highways; and

WHEREAS, Section 316.006(3)(a), Florida Statutes gives counties the power to place and maintain traffic control devices which conform to the manual and specifications of the Department of Transportation, and to carry out the provisions of the chapter or to regulate, warn or guide traffic; and

WHEREAS, Section 30.2905, Florida Statutes gives Sheriff rights to contract for the employment of sheriff's deputies, during off-duty hours, for public or private security reasons; and

WHEREAS, Estero has requested that the Lee County Sheriff's Department place officers and patrol the area of Corkscrew Road located east of the intersection of Alico Road and Corkscrew Road, enforcing both state and county laws over the area depicted in Exhibit "A"; and

WHEREAS, the Lee County Sheriff's Department has agreed to provide traffic control enforcement in the area depicted in Exhibit "A."

NOW THEREFORE, in consideration of the premises and the terms and conditions provided herein, the Parties agree as follows:

1. The Exhibit (Exhibit "A") stated and referenced above is hereby restated and made a part of this Agreement.
2. Services. The Sheriff shall provide additional patrol and traffic enforcement services, as provided in Exhibit "B" (Services), which is attached and incorporated herein. The additional patrol and traffic enforcement services shall be above and beyond the standard level of service already provided in the area depicted and described in Exhibit A--Corkscrew Road from Corkscrew Road/Alico Road intersection east to the Lee County line.

EXHIBIT A-3

3. Fees. Estero shall, in return for the Services provided in Exhibit "B", pay fees as set forth in Exhibit "C" which, is attached and incorporate herein. Such fees are payable to the Sheriff on a bi-weekly basis as billed by the Sheriff.

4. Designation of Agent/Representative: Estero shall designate a responsible agent or representative whose name, address and telephone number shall be placed on file with the Sheriff as long as the Agreement remains in force. Agent/Representative shall serve as the point of contact for Sheriff regarding any and all matters relating to this Agreement.

4. Effective Date of Agreement: This Agreement shall become effective upon fixation of the last signature and date below. The Sheriff shall cause the Services provided in Exhibit "B" to commence immediately following the effective date of the Agreement, but in any case no later than five (5) business days following the effective date of this Agreement.

5. Entire Agreement: This Agreement contains the entire understanding and agreement between the parties hereto and there are no promises, agreements, conditions, undertaking or warranties or representations, oral or written, expressed or implied, between them except as set forth herein.

6. Dispute Resolution and Attorneys Fees: Venue for resolution of any disputes arising from this Agreement shall be in the Circuit Court of Lee County, Florida. The prevailing party shall be entitled to an award of attorneys fees up through and including any appeal.

5. Modifications. This Agreement may only be modified by written document executed with the same formality as this Agreement. However, this Agreement may be terminated by either party upon thirty (30) days written notice.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed.

Approved as to form and legal sufficiency:


Barry R. Hillmyer, Esq.
Lee County Sheriff's Department

Date: 09 21 06

LEE COUNTY SHERIFF'S DEPARTMENT


MIKE SCOTT, SHERIFF

Date: 9.20.06

ESTERO GROUP, LTD.

By:

[Signature]

Position:

General Partner

Date:

Sept 7, 2006

Witness

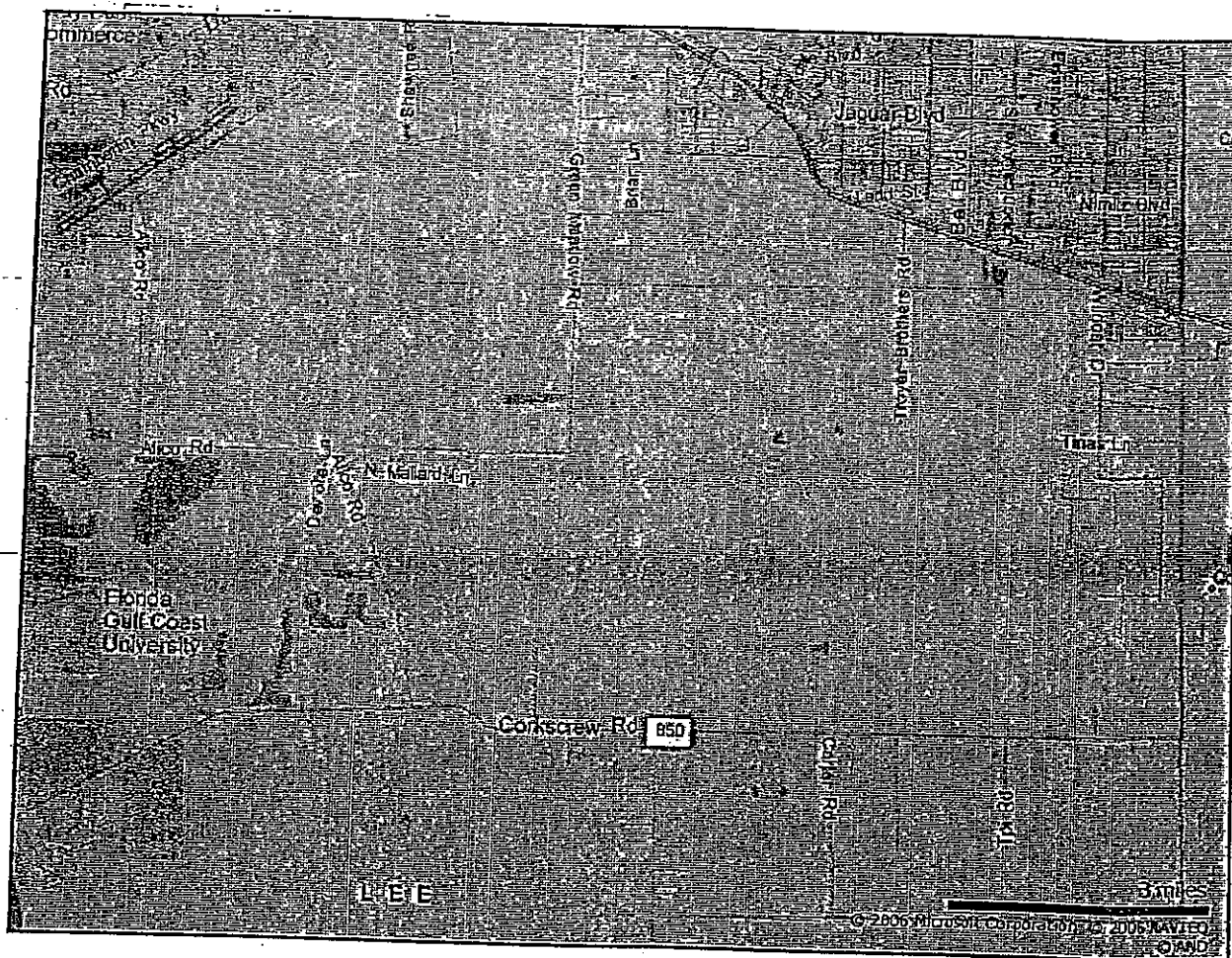
INA M. RICHARDSON

Witness

[Signature]

KI SHANA J. HAYNIE

EXHIBIT A



1. Patrol Services shall be provided on Corkscrew Road (CR 850) from the intersection of Corkscrew Road (CR 850) and Alico Road, east to the County line.
2. The Alico/Corkscrew Road intersection and the County Line, which runs along Corkscrew Road (CR 850) as it curves north, are depicted above.

EXHIBIT B

SERVICES

1. Police Officer(s): Sheriff shall provide at least one (1) off-duty police officer to patrol the area depicted and described in Exhibit A.
 2. Scope of Services: Sheriff shall insure that any off-duty police officer assigned to patrol the areas depicted and described in Exhibit A, provide general traffic patrol services in addition to specialized trucking regulation patrol.
 3. Time and Date of Service: An off-duty police officer shall patrol the areas depicted and described in Exhibit A on at least four (4) days of the week, consisting solely of weekdays. Service shall be for four (4) hours each day between the hours of 6 a.m. and 2 p.m., with a focus on the 6 a.m. to 11 a.m. hours.
 4. Documentation: Sheriff shall provide documentation to Estero of services rendered on a bi-weekly basis including the hours of service and number of tickets or violations issued.
-

EXHIBIT C

FEES

1. Fee Schedule: The following fee schedule has been set by the Sheriff for the provision of off-duty services.

<u>DATES OF SERVICE</u>	<u>FLAT FEE</u> PER FOUR (4) HOUR BLOCK OF TIME	<u>HOURLY FEE</u> BILLED IN FOUR (4) HOUR BLOCKS OF TIME
Effective date of Agreement – October 1, 2006	\$ 7.50	\$27.00
October 1, 2006-	\$0.00	\$40.00

2. Payments: Estero shall make payments on a bi-weekly basis as billed by the Sheriff. Bills should be mailed to: Estero Group, Ltd., 4099 Tamiami Trail, Suite 305, Fort Myers, Florida, 34103.

3. Modifications: Sheriff shall provide Estero with thirty (30) days written notice prior to any change or modification in the Fee Schedule set out in Section 1, above. Failure to provide thirty (30) days written notice shall cause the above Fee Schedule to survive until thirty (30) days have passed from written tender of modification.

EXHIBIT _____

BONA FIDE AGRICULTURAL USES AT TIME OF ZONING APPLICATION

STATE OF FLORIDA

COUNTY OF LEE

Before me this day personally appeared Asa Candler, III, Manager of Estero Group Management, LLC, who being first duly sworn says:

Estero Group, Ltd is the owner of the property described and depicted in the attached Exhibit "A." The agricultural use areas depicted and described on the attached Exhibit "A" were in existence at the time this application was filed. The existing agricultural acreage is approximately 261 acres, and the existing bona fide agricultural uses are livestock grazing and crop production. Estero Group, Ltd. desires and anticipates continuing the existing bona fide agricultural uses subsequent to the rezoning approval, with the agricultural use terminated by project phase.

FURTHER AFFIANT SAYETH NAUGHT.

ESTERO GROUP, LTD., A Florida Limited Partnership

By: Estero Group Management, LLC
Its: Manager

By: *Asa Candler*
Asa Candler, III

Its: Duly Authorized Member/Manager

On this 18th day of July, 2007, before me personally appeared ASA CANDLER, III, who being by me duly sworn, did declare under penalties of perjury that the foregoing affidavit is true and correct and acknowledged said affidavit to be his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year first above written.

Asa Candler, is personally known to me.

NOTARY PUBLIC-STATE OF FLORIDA
Barbara C. Garcia
Commission # DD531745
Expires: MAR. 22, 2010
Bonded Through [unclear] Bonding Co., Inc.

Barbara Garcia
Barbara Garcia
My Commission Expires

EXHIBIT B
DCI2006-00007 - ESTERO GROUP IPD
August 31, 2007 - Special Meeting
Presentation Summary

The Chief Hearing Examiner introduced herself and explained that she had called the special hearing for only the attorneys. She then introduced Donna Marie Collins, Assistant County Attorney, Thomas Hart, the attorney for the opposition, Mike Ciccarone, an attorney representing one of the adjacent property owners, Beverly Grady and K'Shana Haynie, who were representing the Applicant, Estero Group.

She explained that when she sent out the notice calling the hearing, she had indicated that she wanted to discuss and dispense with the issue raised by Mr. Ciccarone regarding the testimony of Dr. Bacchus, who was Mr. Hart's witness. She had since received several items, the last being an email sent to her office manager by Mr. Ciccarone's office, which indicated that a letter was issued on July 31, 2007, from the Department of Business and Professional Regulation (DBPR), quashing or rescinding a notice to cease and desist against Dr. Bacchus for testimony in proceedings similar to those in the current case.

She noted Mr. Ciccarone was the one that brought up the information regarding the allegations against Dr. Bacchus. Mr. Ciccarone said that he brought it up because he had gotten it from Ms. Grady, explaining that it was brought up when they were discussing scheduling of new hearing dates. He had been told by some of the professional geologists in the area that they intended to proceed against Dr. Bacchus with another DBPR complaint. They planned to go to the State Attorney for perjury charges, if she testified in this hearing. So, basically, he was just letting everyone know what he had been told would happen if she testified on an upcoming date.

Since then, the only other document he had was the letter that the Chief Hearing Examiner had just described, which he got from Ms. Grady. He sent it to the Hearing Examiner so that she would have the full package. He also called the State's Assistant Chief Geologist to talk about the case, because there was a lot of confusion about what was going on procedurally and what it meant to be a professional geologist that required a license. The Assistant Chief Geologist explained it to him, essentially, in terms of testimony regarding the movement of underground waters, which was the layman's version of it. He thought that Dr. Bacchus had practiced professional geology without a license in the Putnam County zoning case, which had led to the DBPR order. Everything made sense until the DBPR order was lifted at the end of July. Apparently, it hadn't been lifted when Dr. Bacchus was testifying, which he thought was the subject of Ms. Grady's motion to strike.

The Hearing Examiner said she hadn't even gotten the motion to strike; she found out about it that morning from the County Attorney's office.

Ms. Grady stated that they did not know, until in the hearing, that Dr. Bacchus would be testifying, as Mr. Hart's witness. Her office tried to do some research on Dr. Bacchus and found the information about the Cease and Desist Order, which they didn't get until after her testimony was completed. They shared that information with Mr. Ciccarone and then made another request to DBPR for additional documents on that Order. They received that documentation on Wednesday.

In the meantime, they had prepared the motion to strike and it was literally being delivered when they opened the DBPR package. Everything in the package was really in support of the witness not having to be a licensed geologist, except for the July 31st letter on top. Therefore, they pulled back the motion to strike, because they had made statements in the motion to strike based on everything they had been given by DBPR and this had occurred after the conclusion of the hearing. So when they found that documentation, they pulled back the motion.

The Hearing Examiner surmised that was why she had not gotten a copy of it; it had not been filed with her office. Ms. Grady confirmed that she did not intend to go forward with the motion, as it was incorrect. She still thought the record was inadequate to establish an expertise in the field of hydroecology and she felt that expertise needed to be established and she still wanted to pursue that. They were not finding in their research, where that field was recognized in the United States. They were not finding it was a degree anywhere and they were not finding much information on it.

Ms. Grady thought that if they were going to present a new field that had never been presented to the Hearing Examiner before, then a much better foundation needed to be laid on what it was that a person was an expert in. It was not a field that they found to be recognized in speaking with their experts. Secondly, in looking at the testimony provided on the voir dire, if they looked through the cases that were cited and summarized them, the witness was very non-responsive to that. Certainly what she had found in looking at the files from the DBPR was that the witness was very sophisticated and they had a set of pro se interrogatories that were very sophisticated. She believed they had sufficiently made their objection to the recognition of the field and the expertise.

Dr. Bacchus was supposed to deliver a number of federal and state and Chapter 120 cases in which she had been recognized as an expert in hydroecology. None of that had been provided, and the testimony itself made them incapable of really finding those, because Dr. Bacchus couldn't remember the names of parties or the names or style of cases. Some of them were even confused; she said it was a 120 hearing, but, when they got through, it was really another local hearing before a local government. The Applicant still had not received any of that.

Ms. Grady requested that the Chief Hearing Examiner request that a professional expert who wanted to be an expert witness, provide information on where they had been found to be an expert in that same field so that the parties and the Hearing Examiner would have the benefit of that information.

Mr. Ciccarone commented that he had been thinking about the uniqueness of this case, because the parties were accustomed to dealing with local experts. They knew everything about the local experts and, once established, their expertise was never challenged. They went through the routine of asking for objections, knowing they were going to get stipulations most of the time because everyone knew them.

However, if they had been in a judicial proceeding, the parties would have been required to disclose the experts well in advance of the hearing so that they could be investigated. Maybe it was something they should think about if any party intended to call an "unknown" expert witness at these hearings. He thought it would be reasonable to expect some advance disclosure, so that those who didn't know anything about the expert could do some

investigation to determine whether the person truly was an expert. Otherwise, they would have to go through the type of extended voir dire that Ms. Grady was doing at the last hearing. Long voir dire was very difficult to fit in this hearings, given the time constraints.

Ordinarily, that sort of thing was not needed in a judicial proceeding because the background of the experts was well known. There might be argument about whether their expertise extended to a particular fine point of science, but generally you knew who they were, what they had published, and that sort of thing. He thought that might be a worthwhile lesson to be learned from this because he had the same experience as Ms. Grady. He had tried to figure out what a hydroecologist was and nobody seemed to know, which put them at a disadvantage in trying to determine the expertise of a hydroecologist.

When they didn't know what proceedings this person had been qualified as an expert in, in advance, in effect, they had to take the expert's word for it, when they said they had been qualified and that they were an expert. The Hearing Examiner asked how that was any different from what they did for the experts that they had accepted in this forum. The majority of the experts and consultants walked in, gave a little bit of their background, explained they had worked for five or six years in Lee County, and had worked on this or that project, and didn't remember which ones, but knew there were "a whole bunch of other projects." They were automatically accepted based on their experience in the field and education.

The Hearing Examiner didn't see how Dr. Bacchus's clear education and 30 years of experience was at question as far as expertise was concerned. She understood that he was picking on the title "hydroecologist," but, if she remembered correctly, Kim Trebatoski stood up and said that multi-disciplinary degrees were being awarded and she had received one of the first ones. Ms. Trebatoski had explained that she was advised by her counselors and professors that, because people didn't know what to do with these "multi-dimensional" degrees, she would probably be questioned about her expertise and her education. That was the way things were going, just like doctors and lawyers, professionals were now specializing.

The Hearing Examiner understood the point about everybody knowing who the witnesses were going to be. They didn't always have organized opposition, and that was probably a good procedure to have in an organized opposition or multi-party hearing. She didn't understand why they were specifically focusing so hard on Dr. Bacchus, when clearly her CV substantiated everything she said.

The Hearing Examiner told Ms. Grady that she took a case all the way to the Supreme Court of Florida and she couldn't tell her the name of the case or the party. She remembered it was the City of Maitland and that was it. She honestly didn't know the rest. She didn't even remember who the attorneys were on the other side.

Ms. Grady asserted that a person with the background of Dr. Bacchus should have been well aware of when they had been found an expert in this field, in order to take the position that the field permitted them to testify. However, there was a complete lack of information. As had been previously mentioned, she had seen some very sophisticated interrogatories propounded by Dr. Bacchus in this area and yet she could not really advise them of any case with a name where she had been found to be an expert in hydroecology. Ms. Grady thought that was the field they were focusing on because the other fields were surface and

hydroecology was the only arguable field that let someone give opinion testimony on things happening below the surface.

Mr. Hart explained that he hadn't met Dr. Bacchus until the day of her testimony. He said he would admit that as she was asked questions about this case and that case, he thought it was strange that she didn't remember a little more about when she had been qualified. However, he didn't remember that they were supposed to provide that list, or that she said she would, but, if they were, then he would ask her to get it. He realized it was getting late.

For his own benefit, he put her name in WEST LAW to see what he could find under DOAH cases and a list of about seven of them came up. If he was not mistaken, three or four of them had her qualified as an expert in hydroecology. So he was somewhat satisfied with that, but obviously it wouldn't satisfy Ms. Grady. His point to the Hearing Examiner was that he thought Dr. Bacchus would be able to show that. He didn't know why she didn't remember it at the time. He added that he didn't know her and he didn't understand what she thought and what she knew.

Mr. Hart thought it would be important for the Hearing Examiner to know that at the time Dr. Bacchus testified, she had an unsigned letter from the DBPR dismissing the cease and desist order. She told him that they sent it to her and her sense was that they wanted to see if it would satisfy her because she had filed a federal case against the Department for having done what they did to her. After the hearing, the Department sent her the signed one that the Hearing Examiner now had. He didn't know that he wanted to enter it into the record, but he showed the Hearing Examiner the letter with the July 9 date on it.

He further explained that she had some sense that this thing was not the problem that they seemed to think it was for her. The Hearing Examiner noted that the only difference in the letter was the date on it. She read the following excerpt from the letter: "...will not prosecute charges against you...any future prosecution for the unlicensed practice of professional geology would arise if you represent yourself as a professional geologist."

The Hearing Examiner asked where the letter was that indicated that she could testify in cases such as the 2005 one. It was determined that it was the letter from Ms. Haynie and was dated July 31. It indicated that she was permitted to give presentations of the type at issue in case 2005-056737, which the Hearing Examiner believed was the case in Putnam County. The only difference in that and the July 31 letter was the signature by Tony Cliff, Chief Attorney.

Mr. Hart also thought that the other thing that should be heard was that Dr. Bacchus thought geology was one thing and that hydroecology was something else. She was being accused of practicing geology and said she wasn't and she said that all along. Now she had a letter that said she wasn't and the Department had lifted that order. So she felt she had been justified in doing exactly what she did - testifying in this hearing. The Hearing Examiner clarified the statement, using the word "exonerated." Mr. Hart and Mr. Ciccarone both agreed with that.

At that point, Ms. Collins added that the County did not object to Dr. Bacchus's testimony. A comparison of her resume, her educational background, and her work background, with the areas in which she was qualified as an expert, going from the transcript, showed that her testimony really didn't deviate from those areas.

Ms. Collins and County Staff had identified four areas in her vast testimony that they felt were questionable and may have strayed a little bit over to what might be considered geology. If there was going to be any motion to strike, they would only entertain it as to those areas, but she wanted to repeat that they found them only to be gray areas. Dr. Bacchus was very careful each time as she testified to tie everything back to wetlands and wetlands ecology.

Ms. Collins also thought that, when they really looked at this closely, considering the fields in which she was qualified as an expert in, her educational background, her degrees and her work experience, substantiated a finding, absent any voir dire in any form, that she had a higher level of expertise in this area than a layman, and was therefore qualified to render some opinions as to potential effect of mining on wetland, vegetation, ecology, etcetera.

The Hearing Examiner questioned why the Applicant felt that she could not use her time at rebuttal or at cross-examination to bring these areas to light and to rebut them if at all possible. Ms. Grady replied that they would do that, clarifying that the expertise related to the surface waters and the wetland vegetation. Nevertheless, she didn't feel the witness had established a foundation for the Hearing Examiner's acceptance of a new field of science, i.e. hydroecology, which then permitted testimony that dealt in those areas of subsurface areas. She didn't think that foundation was properly laid, and she did not feel they were given time to actually explore that. She didn't think that the witness was forthcoming in providing that foundation or the cases in which she was accepted as an expert in the field of hydroecology.

Further, Ms. Grady didn't think the field was even really defined, as they were not finding it defined in the United States; they were not finding that it was a degree, anywhere. So the Hearing Examiner was recognizing brand new expertise that had not been recognized here before, and she thought that merited investigation before that finding was made. The Hearing Examiner replied that if she was the only one who was making or had made that finding and if it was the only time that the finding had been made, she would agree with Ms. Grady's arguments. However, as Mr. Hart had indicated, if Dr. Bacchus had been found to be an expert in hydroecology in four or five previous DOAH hearings, then as far as she was concerned the foundation was laid for a finding in this forum.

The Hearing Examiner asked Mr. Hart to obtain those cases in which Dr. Bacchus was qualified as an expert and submit them into the record. She told Ms. Grady that she was not going to go back on her finding or go back on accepting Dr. Bacchus as an expert in hydroecology. Mr. Hart could provide Ms. Grady with those cases and she could use them as the basis of cross examination, if she so chose. The Hearing Examiner stated her feelings that the Applicant and others had done an "overkill" job on Dr. Bacchus. In her opinion, some of the statements made in that hearing, in front of the people that hired her, and people that were obviously her friends, were a little out of hand and totally out of line. Mr. Ciccarone said he made them, but explained that what he was telling the Hearing Examiner was exactly what he was told was going to happen.

The Hearing Examiner told him she understood that, but did not think that he anticipated the shock value on everyone in the room when he made those allegations of perjury, and that they would be bringing people in, from this professional community, to testify that Dr. Bacchus had perjured herself. Even though Mr. Ciccarone did not recall saying that, the Hearing Examiner stated he had done so.

The Hearing Examiner stated she didn't have any authority to find perjury; if he was going to charge a witness with perjury, he would have to go to the State Attorney's office. He would have to take the case there and they would have to make the decision whether further action in the regular courts was merited. For that reason, she would never have heard any witnesses that someone brought for the sole purpose of proving up a charge of perjury; it simply would not have happened. She was really upset about it and she told them that she felt like they had really gone overboard on this witness. She felt the witness was well qualified, given her CV.

The Hearing Examiner added that the Applicant's witnesses had been accepted as experts. She understood that they had the responsibility of proving that Dr. Bacchus' credentials were not as great as she had made them out to be; however, spending two days on voir dire of that witness was unacceptable in this proceeding. This was a quasi-judicial proceeding; it was not the court system. She noted that the Hearing Examiners had accepted other witnesses on face value and on their resumes alone. In the more than 16 years that she has been a Hearing Examiner, she had never seen anyone subjected to the kind of interrogation that they were putting this woman through.

The Hearing Examiner added that she understood that Dr. Bacchus was having difficulty with remembering case specifics. However, a review of her CV, which listed her peer related articles, her education and her experience, was sufficient for the Hearing Examiner to find Dr. Bacchus to be an expert. The Hearing Examiner was sorry if the Applicant and their supporters had a problem with Dr. Bacchus being accepted as an expert, but it was the Hearing Examiner's call. She reiterated her opinion that Dr. Bacchus had proved her expertise on the basis of her CV alone. So, if the Applicant and their supporters had objections or additional questions, they needed to bring in their witnesses to hear Dr. Bacchus' cross-examination and then put on a rebuttal and witnesses to prove she was wrong. That was the way it needed to be handled; not allegations that the witness was perjuring herself.

The Hearing Examiner thought that making allegations that other people in the community were going to charge this woman with perjury in front of the entire group and people that had hired her was totally unwarranted. She recalled that, at that point in time, everybody had reacted with shock, because he had not merely indicated that there was a question; instead it was presented in such a way that it looked as if they were going to prove that Dr. Bacchus was a liar. The Hearing Examiner stated that would not happen in this hearing and she wanted them to understand that. It was why she wanted the hearing today; she wanted the meeting so that they could get all of this out. She didn't intend to discuss this on Tuesday in front of Dr. Bacchus's employers and friends. The fact that the allegation had already been made was bad enough. She would not allow them to sit and continue to hammer away at her; she wouldn't let it happen to any of the witnesses.

Ms. Collins wondered if it wouldn't be more effective to have their experts just go up and say what their qualifications were and say that they disagreed with Dr. Bacchus on certain issues. They could just indicate that they looked at the same set of factors and their conclusions were different. Then they could put on a persuasive case. She indicated that it was the County's perspective that the BOCC should have the most information they could possibly have.

Ms. Grady indicated that she asked questions that were typical when there was a brand new field that had never been recognized by Lee County. She had never heard of it before, her hydrologists had never heard of it before, and the ecologists on her team had not heard of it. It was her duty and obligation to have Dr. Bacchus and Mr. Hart present on the record what this expertise was and why she said she had it. Since the Applicant had never heard of it, they needed to know where she had been recognized in it. .

Ms. Collins indicated her point was that Ms. Grady should make her case if she felt mining in this area was fine, then she should put her experts up there and have them show it.

The Hearing Examiner pointed out that it would clearly be a battle of experts and her decision would not necessarily be the BOCC's decision. The BOCC would be looking at it from a different area and they were already looking at the DRGR. This would be the first of three or four cases coming after it. She realized it was a really important case; however the Board would have enough problems reading an eleven-day transcript and she didn't know if they had gotten the transcripts yet. All of them were double transcripts, i.e., morning and afternoon.

The Hearing Examiner apologized if Ms. Grady felt the Hearing Examiner had been picking on her, but the Hearing Examiner saw this happening and it came so late in the game that it was total confusion that day. Everyone was shocked to be handed a stack of stuff to read because it was going to prove the witness was lying. Mr. Ciccarone's words were that this would determine whether the witness should rethink coming in for cross examination. If she didn't come in and present herself for cross examination, then he thought every bit of her testimony should be stricken.

It was in front of a group of people, who were not just the attorneys but County witnesses, Ms. Grady's consultants, Dr. Bacchus' friends, etc. The Hearing Examiner thought that at that point it became a real emotional impact, and she really didn't want it to degenerate into that kind of thing. She wanted it to be kept as much on an impersonal level as possible. She understood their questions and concerns about hydroecology. If she was the first one to say that it was definitely an area of expertise, she would agree with them, but she was not, based on Dr. Bacchus' CV.

So, if it would make them happier then Mr. Hart could give them the cases in which she was actually accepted as an expert in hydroecology. She asked Mr. Hart to provide those to everyone if he could. It would be off the record unless he wanted to use them on the record. They could be used in cross examination, but she wanted them to handle it in that manner instead of trying to take the witness apart. Then they could put on their case and bring their witnesses in to rebut anything Dr. Bacchus had said.

If the Applicant insisted on making Dr. Bacchus prove up her licensing and her qualifications, then the Hearing Examiner would feel duty bound to require the Applicant to prove up all of her witnesses, because they had accepted them more on a wink and a nod than anything else as experts in this proceeding. None of them had gone through this kind of questioning. If it was going to be that much of a point, then she felt like Ms. Grady needed to be bringing her witnesses up and having them go through their expertise from beginning to end. She thought that would only be fair for the full record; if the case got appealed, then all of their qualifications should be in there. . She hated to do that because she had to read all of it. They would have to read it also for whatever they were presenting

to the Board or anywhere else. But, it was her opinion that what was good for the goose was good for the gander.

Ms. Grady wanted to state for the record that she had no objection to any of her experts being questioned by anyone as to their expertise. She would say that her experts were recognized in the community and a big part of their acceptance was based on the working relationship between her people and County Staff.

The Hearing Examiner wanted to see if they could handle the situation differently. She asked Mr. Hart to get those cases and to get Dr. Bacchus to provide any other case names or whatnot where she had been accepted and qualified as a hydroecologist and provide them to Ms. Grady, asking if he could do that before Tuesday. Mr. Hart indicated that he would give her the list that he found that same day of the hearing.

The Hearing Examiner advised them that she had no intentions of rehashing this matter on Tuesday morning; if the plan was to start with Dr. Bacchus' cross-examination, she wanted to start right in. She asked that Mr. Ciccarone indicate, on the record, that morning that he was withdrawing objections to Dr. Bacchus' previous testimony. Mr. Ciccarone indicated that he never did object; all he was trying to do was to assist the parties in figuring out how to reschedule the future days of hearing. He had had that enormous stack of paper laid on him and he was getting phone calls from local professional geologists telling him what they were going to do if she testified in violation of the cease and desist order. His intervention was to give the Hearing Examiner and Dr. Bacchus fair warning of what to expect if she was going to testify.

Ms. Collins wanted to know if those people had read the transcript of her testimony when they were saying this to him. Mr. Ciccarone said yes, identifying one of them as the complainant that brought about the DBPR cease and desist order. Ms. Collins responded that the County's experts, Sam Lee and Lee Werst, had looked through it and they identified four excerpts where it was grey and that was as far as they would go. They said "grey."

Mr. Ciccarone said he was not a geologist; all he was trying to do was tell Dr. Bacchus that this was what was being threatened. He wasn't threatening her and he wasn't planning to come in and tear her apart. He had never seen a case like this where someone was testifying in what appeared to be in violation of a cease and desist order. He never had outside people in the community be so aware of it, that the complainants from the Putnam County case was telling him that they were going to the State Attorney's office and file perjury charges and file another charge with DBPR. He was literally giving the woman fair warning so that if she said "I'm not coming back," than at least the Hearing Examiner would know how to schedule the rest of the hearing. He never intended to object and never did object to her testimony. He would be happy to indicate that the information they had was dated.

The Hearing Examiner stated that it was now a moot issue, but she wanted something on the record. Mr. Ciccarone indicated that he would say something that would exonerate Dr. Bacchus, because, quite frankly, she had been exonerated. The Hearing Examiner felt that because it was on the record on the 24th she needed to have something closing that issue out. She didn't want any further discussion on it, if at all possible.

Mr. Ciccarone said he would concede that the cease and desist order was no longer relevant, and that he and his client had no criticisms to make of Dr. Bacchus' veracity or her prior testimony in other cases. That reserved Ms. Grady's right to argue about Dr. Bacchus' level of expertise but, in terms of the law being broken, it was clear that Dr. Bacchus was not breaking the law.

Ms. Collins suggested that it might be a good idea, at the beginning of the hearing, to know that an expert witness, unknown to the community, was being presented at the hearing. That way the Applicant and the County would have the benefit of knowing who that witness was, and would have the opportunity to research their background or at least be provided with a resume and some information pertinent to the claim of expertise. The Hearing Examiner concurred that would be helpful. Ms. Collins indicated that the problem in this case was that, although it wasn't meant to be, Dr. Bacchus was more like a surprise witness, particularly since she was taken out of turn.

Then the Hearing Examiner explained that one stumbling block in the public hearing process was that her office did not know - literally until they walked into the hearing room - that there was "organized opposition" to the requested rezoning. If the parties knew in advance that there was or was likely to be organized opposition, they should notify the Hearing Examiner, because not all hearings are scheduled to multi-day affairs. The 24-hour notice was only between the Applicant and Staff and if there was going to be an opposing party, maybe they needed to have some mechanism to advise everyone of their position, reiterating that she did not know, most of the time, until she entered the hearing room.,

Ms. Collins noted that perhaps they could have an announcement at the beginning. She thought the purpose of the hearing was to allow all of the testimony and evidence in, so that there was as much information as possible for her to make a recommendation. She didn't think there was any benefit to anyone and least of all the Hearing Examiner and Commissioners, if someone was left without an opportunity to address what had been presented.

Then the Hearing Examiner inquired if Staff notified the County Attorneys if there was opposition to a request. She asked if Ms. Collins knew that Mr. Hart or Mr. Ciccarone were involved in this, and she responded that she knew about Mr. Hart, but not Mr. Ciccarone..

Mr. Ciccarone opined that such a notification system would have helped Mr. Hart and them all in this case. If they had had several days notice, Mr. Hart could have avoided the problem about Dr. Bacchus. They could have looked her up and then called Mr. Hart to inquire if he was aware of the cease and desist order. Mr. Hart could then have followed up with Dr. Bacchus and presented that information to the other attorneys. They would never have had the scenario if they had known any of this ahead of time.

Mr. Hart expressed a concern that the public would then be held to a higher standard. They understood that there were fairness requirements and it was part of their duty as attorneys. However, there were an awful lot of people (public) out there and it was very difficult for them to hold to that kind of a standard. The Hearing Examiner said she couldn't hold the general public witnesses to a higher standard; the public had to be able to present what they were going to present. However, she did not have to taken their witness out of turn. He understood that they might not understand it, but they would have to live with it because

there had to be fairness in the process. However, any rule that they came up with could only bind folks around this table. He said that you couldn't bind those other folks.

The Hearing Examiner advised that, typically in hearings like this, she gave a lot more leeway to the attorneys. She and the Deputy Hearing Examiner have discussed how to accept objections and intervention from the public's attorney, and what standing a member of the public actually has in our hearings. What she had done was to give the public's attorney "artificial standing" because she put them on the same level as the attorneys for the County and the Applicant. She knew that they would be making a case and bringing their own witnesses, and in larger cases let the attorneys cross-examine the County's and the Applicant's witnesses as they appeared. If, however, the case was not a big one, she only allowed the public's attorneys to cross-examine the County's and the Applicant's witnesses during the public portion of the hearing.

When she knew the case was going to occupy several days of hearing, it was just much easier to let everybody do their cross-examination as the witness' testimony is taken. That way she had everything together; then, she did not have to hunt through multiple transcripts to find all the testimony relating to that one witness. It also tended to release some of the witnesses early, once their testimony was out of the way. She did that for the attorneys and she would expect only the attorneys to be bound by any requirement to provide a list of expert witnesses. She did not expect them to list the lay witnesses, and did not think it was necessary to that extent. However, she had to agree with Mr. Ciccarone and Ms. Collins that any professional witnesses should be listed.

Although, this was the first time this situation had happened, she was sure it wouldn't be the last time, because the process was getting more and more sophisticated. Speaking for himself, Mr. Ciccarone said he, as an opponent to the request, would not object to providing a list of experts for the benefit of the hearing. However, he was not sure it was reasonable for Dr. Bacchus to appear as a layperson's witness but then to allow Mr. Hart to conduct the direct examination as if the witness were being called by him. He reiterated that he had no problems with making his witnesses known; he knew he would have to do it in any judicial proceeding.

The Hearing Examiner recalled instances in which the opposition did not obtain expert witnesses until after the first days of hearing. In that event, the public's experts should be made known to the Hearing Examiner and the parties as soon as the expert(s) is hired.

Then Mr. Hart explained that Dr. Bacchus had been hired by some of the people who were not his clients, but they wanted him to call her as a witness, because he had been sort of the leader of the coalition. He didn't know in advance and couldn't have told anybody in advance she was coming; he didn't know she was his witness until the night before. He didn't even have to have her as his witness. He could have said no that he didn't know her and didn't know what she was going to say and that they better deal with that and he wouldn't use her. Then they would be right back in the same boat because she might show up next week for the first time. So the point was that he thought it made sense to hold the local attorneys to that higher standard, but the rule would have to be pretty flexible for everybody else.

The Hearing Examiner described her idea of organized opposition as a land use planner, an engineer or an attorney actually organizing and spearheading the case for single or

multiple entities. She believed that they, as an opposition party leader, should be held to the higher standard, but no lay witnesses should be. She couldn't expect them to provide notice of an expert witness before the hearing, so the parties would just have to deal with that matter as best they could during the hearing. Then the Hearing Examiner indicated that she might issue a memo to the professionals and County Staff doing the zoning hearings that they would have to notify the Hearing Examiner and the other parties 24 hours before the hearing, when they planned to call an expert witness that was not known to the community.

Then Ms. Collins added that she wanted the Hearing Examiner to consider redacting the statements on the transcript pertaining to perjury and the cease and desist orders, because she thought it would clutter the record and not be of much use to the Hearing Examiner or the BOCC ultimately. However, she left it up to the Hearing Examiner.

Mr. Ciccarone agreed to that as it was only fair. Ms. Grady wanted to think about changing the record and hoped the Hearing Examiner would withhold ruling on that until she had a chance to think about it. Then the Hearing Examiner said she would wait, but that they should look the record over as there were just very specific statements made the morning of the 24th, or it might have been the 25th. Lines in the morning of the 24th, which was the last day of that hearing, or it might have been the 25th, she couldn't recall the actual date.

Ms. Collins mentioned that the County still hadn't had an opportunity to present their case. Lee Werst and Sam Lee would be testifying pertaining to the issues of geology but she didn't think they would be testifying as to hydroecology. She knew that they would be testifying to groundwater and things of that nature. County Staff had recommended approval of the application, so their testimony would be in that light. However, her understanding was that they may be seeking to add conditions that had not been agreed to by the Applicant. Their presentation, as it had been explained to her, would be focused on those issues, but they had not yet had the opportunity to get anything on the record.. The record had been kind of chopped up because they had taken things out of order and now they would be cross-examining Dr. Bacchus next week, before the County had completed their Staff Report presentation.

The Hearing Examiner felt that would actually be helpful to the County, and asked if they were going to attend the hearing for Dr. Bacchus' testimony. Ms. Collins wasn't sure, asking if they were spending the entire day on Dr. Bacchus. Given the statements made by the Applicant and other, the Hearing Examiner anticipated two days of cross examination of Dr. Bacchus. They could probably keep an eye on it from the TV, but they would need to provide Ms. Collins with questions if she was going to do any cross examination.

Mr. Hart wanted to discuss the cross examination, as they had not really done so. He wanted to know if Tom Missimer and other geologists were going to come in and ask to cross examine Dr. Bacchus. Ms. Grady indicated there might be some from Lee County that would be both rebuttal witnesses and might also assist with cross examination questions. So they would be present for the 4th and 5th. The Hearing Examiner verified that was strictly for cross examination on the content - not on the expertise of the witness. Ms. Grady confirmed that.

Then Ms. Collins received confirmation from the Hearing Examiner there wouldn't be rebuttal testimony until after the County had presented their case. The Hearing Examiner

told Ms. Grady that if she was using some of them for the cross examination of Dr. Bacchus, she should use those experts in the Applicant's rebuttal case. . Normal policy was that public had to wait to cross and ask questions; unless called by a party, Tom Missimer and other geologists would be public and would not be allowed to participate in the Applicant's cross examination of other experts. If, however, they were brought in by Ms. Grady, it wouldn't be as public.

Mr. Hart indicated that he had asked that question of Mr. Ciccarone because he made that statement that other geologists might come in to cross examine Dr. Bacchus. He felt it would be to everyone's benefit to know if they were expecting public to come in for the sole purpose of crossing Dr. Bacchus, especially if she couldn't be present after the first two or three days. He wanted to know if she was going to be in a position where she had to let them cross examine her; he didn't care, however, he was concerned about the timing factor.

The Hearing Examiner didn't know how she would handle the situation, if any of them came in wanting to cross examine Dr. Bacchus to bring a law suit against her. They would be allowed to cross examine if they had an interest in the case itself - not just in the particular witness. That would have to be an off the cuff decision at the time if it happened. She was hoping and assuming that it wouldn't happen, because if any of this was going to be for proof of perjury, she was going to be quite upset about it.

Ms. Collins wanted to know if there were going to be people that weren't present for her testimony, who were members of the public show up and cross examine her. She thought that was what Mr. Hart was asking too. . Mr. Ciccarone said he could assure them that if anyone came forward and claimed to be doing that at his request, they were not being honest. His understanding of the way this was supposed to proceed was that Ms. Grady would conduct a cross examination of Dr. Bacchus and then put on her rebuttal. The Hearing Examiner confirmed that both parties had the right of cross examination, as did the members of the public. However, if County or the Applicant were going to be using someone that was not part of their primary case, she expected to see them in the party's rebuttal presentation.

Ms. Collins said she would not cross examine Dr. Bacchus, as both the County experts told her they could address anything she raised as part of their presentation and that was their plan. However she did not coach them, they were County Staff. They explained to her that they didn't feel that they would make any beneficial points by cross examining her. They wanted to address the issues that she presented with which they disagreed in their presentation. That was how they were going to handle it. Soa, when they were talking about cross examination, she guessed they were talking about the folks at the table and any redirect that Mr. Hart wanted to put on. She said that, when they talked about rebuttal, she wanted clarification that rebuttal was going to occur after all of the hydroecology was in the record. The Hearing Examiner confirmed it would be after all of the expert testimony and after all of the public testimony. Ms. Grady and Ms. Collins would have the opportunity to sum up if they felt it was necessary.

Ms. Collins also wanted to say so that there were no surprises later, that the County's water people had some remaining concerns and would be suggesting more conditions. She suggested that Ms. Grady have Mr. Horvath contact them to discuss this matter before the final hearings in the case. She didn't know when they could make that contact because she

was sure Ms. Grady's folks would want to be present for Dr. Bacchus, but suggested they should try to do that soon. Ms. Grady agreed to that.

Then Mr. Ciccarone wanted to know if the Hearing Examiner was going to redact things from the record. The she said she would have to give some thought as to how she would like him to speak on the record to cure the Dr. Bacchus situation. Ms. Collins said that would be an alternative. Mr. Hart said they had been on the record all morning and he didn't know what the point of redacting would be now.

Mr. Ciccarone was trying to assure Dr. Bacchus that she was not in trouble. The Hearing Examiner said the only way she could see for him to handle it would be for him to indicate that the situation had essentially righted itself and that he would appreciate having any remarks that he made during this last hearing being stricken from the record as it was now a moot issue, rather than leaving it to possibly cloud the record. That would be because it was his testimony and he thought he would be the appropriate person to ask to have it stricken. He agreed.

Ms. Collins wanted to add that, although the motion to strike was not filed with the Hearing Examiner, because it was filed with the County Attorney's office, it was a public record. She understood that it was Ms. Grady's intention not to file this with the Hearing Examiner, but it was a public record and would be in the file for this case and it was subject to anyone who wanted to see it. The Hearing Examiner said it was in the County Attorney's file and that, although Ms. Collins had given her a copy, the Hearing Examiner had not had time to read it.

Then the Hearing Examiner asked Ms. Grady to issue a notice of withdrawal of the motion to strike and serve all parties. That would take care of that document so they didn't have anything hanging out there and she could bring it in on Tuesday and present it to everybody. Ms. Grady said that, at the conclusion of the hearing, she thought Mr. Hart was going to provide a list of the clients in the official record to the Hearing Examiner, and wondered if that had happened. It had not yet happened and Mr. Hart said he would, but then he had to leave. He said he had two clients: Lorraine Lytel and Wildcat Run Homeowner's Association. Hearing Examiner said she would need him to do that on the record too, because this was sort of an "aside" situation; it would not be part of the official hearing record.

Then Ms. Collins said that in terms of scheduling, she understood they were set for Tuesday, Wednesday, and Friday of the next week and Tuesday, Wednesday, and Friday of the following week. Ms. Collins needed to be out of the door at 3 p.m. on Friday that week. She wanted to let them know she could have someone else sit in there if it was everyone's desire to continue until 5:00 p.m., but she had to take her son to a doctor appointment that she didn't want to change. The Hearing Examiner said they would see how it worked on Friday morning and give Ms. Perry-Lehnert or someone a heads up that they might need to sit in if they decided to continue the hearing to the end of the day.

The Hearing Examiner indicated that she didn't know where they would be with Dr. Bacchus' testimony. Hopefully they would be done with her by that point in time and then proceed with Harry Campbell for the County. She thought they needed to pick up with the County's case and finish up there.

Ms. Collins wanted to know if the water guys were going to go first or after Dr. Bacchus. The Hearing Examiner didn't know and asked them to manage that. They could call them up and she would swear them in.

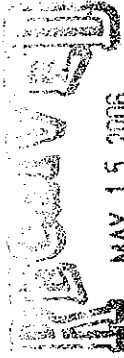
Mr. Ciccarone questioned whether they would put Dr. Bacchus on September 4th, because that was the day she said she was available. However, if she was available later and the Hearing Examiner wanted to do the County's case first and Dr. Bacchus he didn't care, then he didn't know that they would care. Ms. Grady said as long as Dr. Bacchus was here for the 4th and 5th of September. Ms. Collins said she was coming from out of town and was probably already set to come, and she thought they probably needed to accommodate that. Mr. Hart said she was set to come for the 4th and 5th and she could be here on the afternoon of September 7th. She had an evening function on the September 6th, so she would have to fly in on Friday morning if that was what they were talking about. She couldn't be present right at 9:00, however, the Hearing Examiner said they could see if they could get her done after two full days, as she would definitely be present on September 4th and 5th.

At that time, the special meeting was concluded.

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN SECTION 23, TOWNSHIP 46 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCE AT THE SOUTHEAST CORNER OF SECTION 23, TOWNSHIP 46 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA; THENCE RUN SOUTH 88°54'25" WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, FOR A DISTANCE OF 525.38 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE SOUTH 88°54'25" WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, FOR A DISTANCE OF 2141.30 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 23; THENCE RUN SOUTH 88°52'21" WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 23, FOR A DISTANCE OF 12.67 FEET; THENCE RUN NORTH 01°08'34" WEST, FOR A DISTANCE OF 1115.00 FEET; THENCE RUN SOUTH 88°51'50" WEST FOR A DISTANCE OF 810.00 FEET; THENCE RUN NORTH 01°08'34" WEST FOR A DISTANCE OF 888.90 FEET; THENCE RUN NORTH 88°38'04" EAST FOR A DISTANCE OF 0.12 FEET; THENCE RUN NORTH 03°23'20" WEST FOR A DISTANCE OF 3303.70 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 23; THENCE RUN NORTH 88°57'53" EAST, ALONG THE NORTH LINE OF SAID SECTION 23, FOR A DISTANCE OF 2261.47 FEET; THENCE RUN SOUTH 03°16'26" EAST, PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, FOR A DISTANCE OF 990.00 FEET; THENCE RUN NORTH 88°57'53" EAST FOR A DISTANCE OF 634.60 FEET; THENCE RUN SOUTH 03°16'26" EAST, PARALLEL WITH THE EAST LINE OF SAID SECTION 23, FOR A DISTANCE OF 4315.26 FEET TO THE POINT OF BEGINNING; CONTAINING 318.568 ACRES MORE OR LESS.

DCI 2006-00007

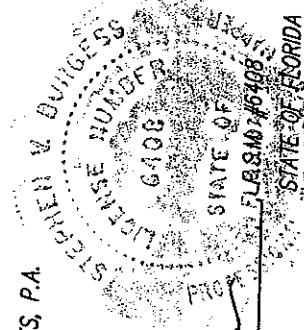


PERMIT COUNTER

Q. GRADY MINOR AND ASSOCIATES, P.A.

SIGNED 5-12-06

Stephen V. Burgess
 STEPHEN V. BURGESS



LEGAL DESCRIPTION TO ACCOMPANY SKETCH
 ESTERO GROUP IPD
 SECTION 23, TOWNSHIP 46 SOUTH, RANGE 27 EAST
 LEE COUNTY, FLORIDA
 DATE: MAY, 2006 DRAWING: B-3288

NOTES:

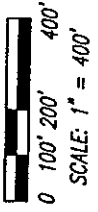
1. BEARINGS AND COORDINATES SHOWN HEREON ARE REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983, NGS ADJUSTMENT OF 1999 NAD 83(1999) AND ARE IN U.S. SURVEY FEET.
2. THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS AND/OR RESTRICTIONS OF RECORD.
3. DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.

Applicant's Legal Checked
 by lgm 5/15/2006

* THIS IS NOT A SURVEY *

SHEET: 1 OF 4	<p>Q. GRADY MINOR AND ASSOCIATES, P.A. CIVIL ENGINEERS - LAND SURVEYORS - PLANNERS 3800 VIA DEL REY BONITA SPRINGS, FLORIDA 34134 PHONE : (239) 947-1144 FAX : (239) 947-0376 CERTIFICATE OF AUTHORIZATION NUMBER LB 5151</p>
DRAWN: F.D.	
JOB CODE: WCM	
SCALE: 1" = 400'	

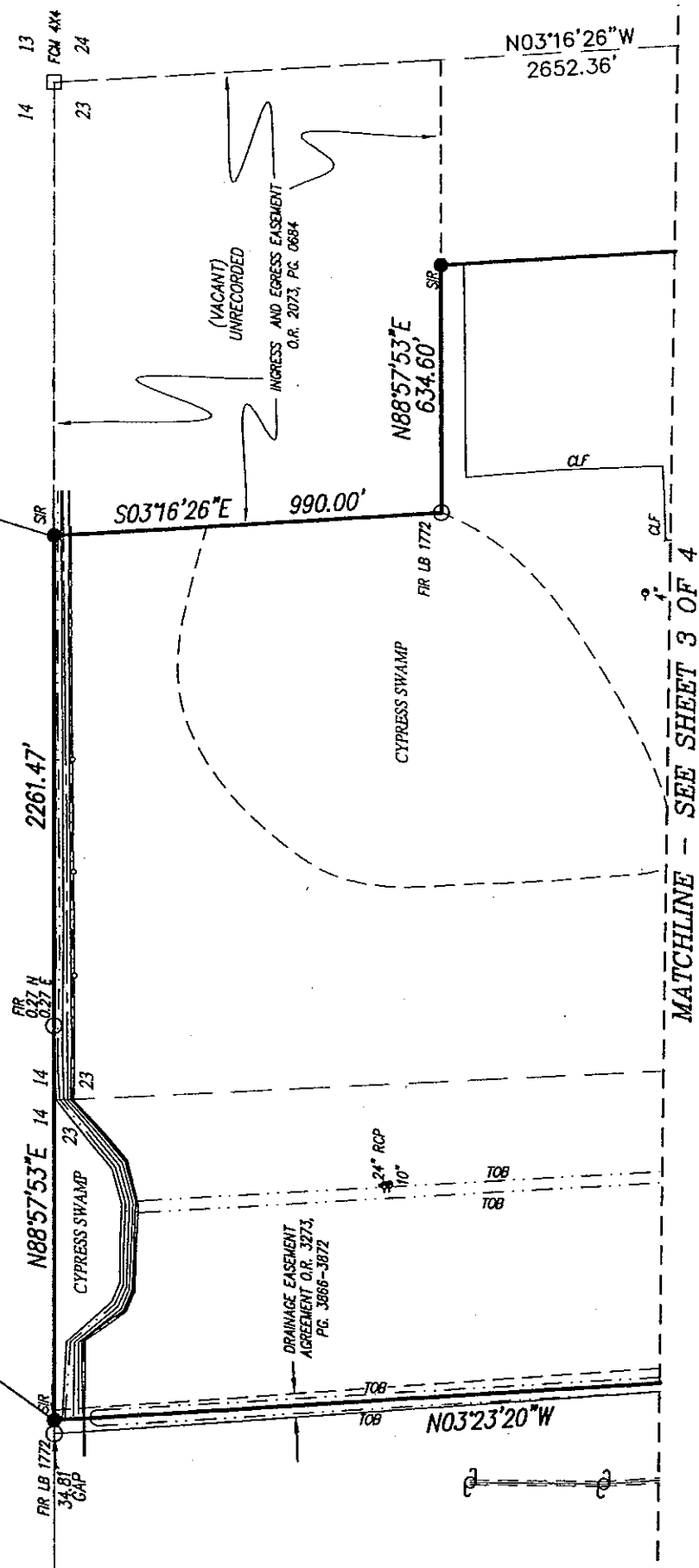
Sketch of Applicant's Legal Checked by gcm 5/15/2006 (pg 1 of 3)



GRID N: 775111.204
 GRID E: 790186.412
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 LONGITUDE: -80°35'25.214"

(VACANT) PERMIT COUNTER
 O.R. 1972 PG. 1477
 MAY 15 2006

DCI 2006-00007
 GRID N: 775152.068
 GRID E: 792447.508
 LATITUDE: 26°27'56.263"
 LONGITUDE: -80°35'00.332"



* THIS IS NOT A SURVEY *
 SKETCH TO ACCOMPANY LEGAL DESCRIPTION
 ESTERO GROUP IPD
 SECTION 28, TOWNSHIP 46 SOUTH, RANGE 27 EAST
 LEE COUNTY, FLORIDA
 DATE: MAY, 2006
 DRAWING: B-3288

SHEET: 2 OF 4

DRAWN: F.D.

JOB CODE: WCM

SCALE: 1" = 400'

Q. GRADY MINOR AND ASSOCIATES, P.A.
 CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS
 3800 VIA DEL REY
 BONITA SPRINGS, FLORIDA 34134
 PHONE: (239) 947-1144 FAX: (239) 947-0875
 CERTIFICATE OF AUTHORIZATION NUMBER LB 5161

DCI 2006-00007

Applicant's Legal Checked
by Lgon 5/15/2006
(Page 2 of 3)

Sketch
of

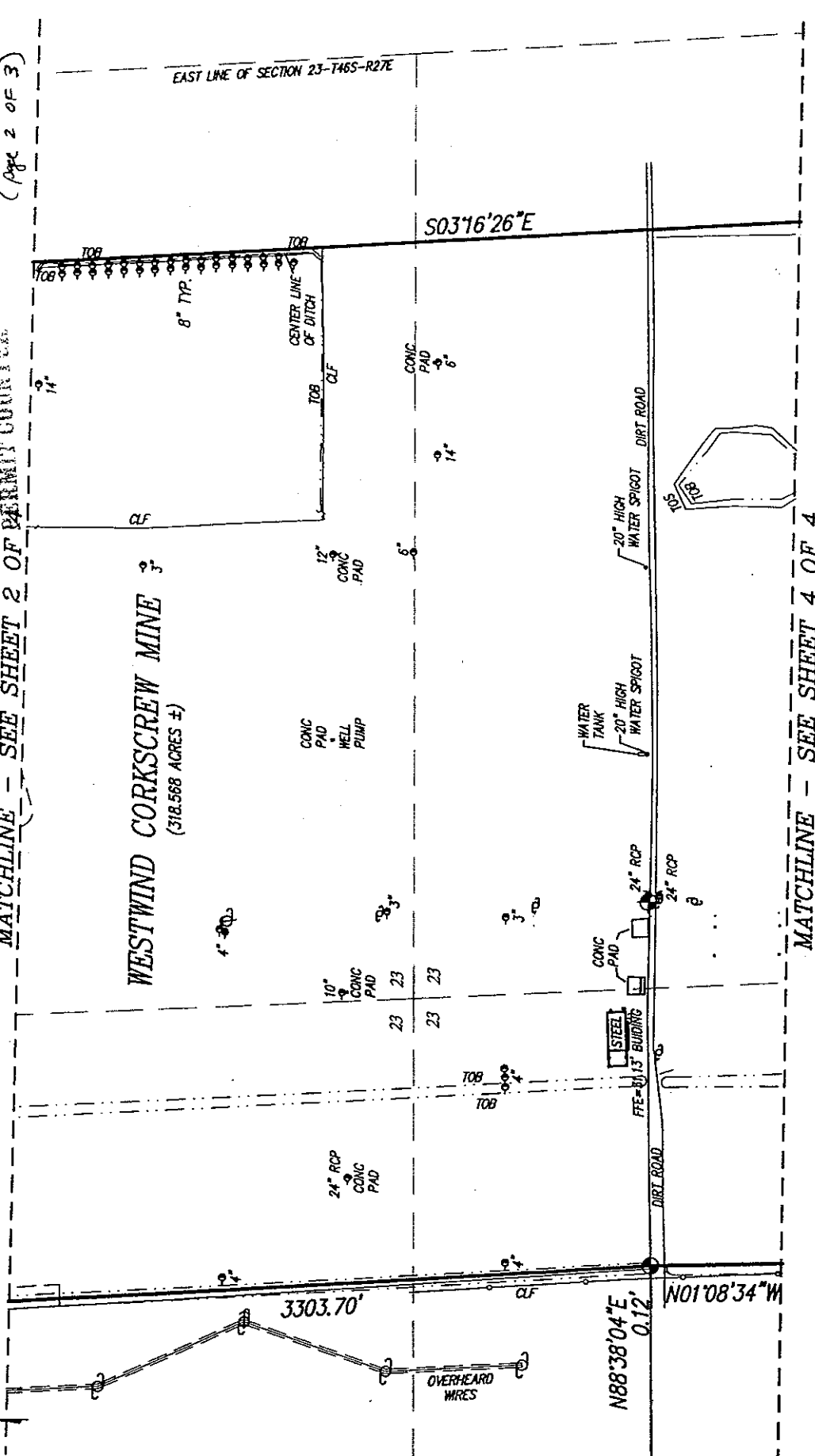
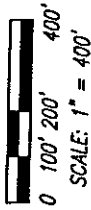
MAY 15 2006

MATCHLINE - SEE SHEET 2 OF PERMIT COUNTY

WESTWIND CORKSCREW MINE
(318.588 ACRES ±)

EAST LINE OF SECTION 23-T46S-R27E

S03°16'26"E



MATCHLINE - SEE SHEET 4 OF 4

* THIS IS NOT A SURVEY *

SKETCH TO ACCOMPANY LEGAL DESCRIPTION
ESTERO GROUP IPD
SECTION 23, TOWNSHIP 46 SOUTH, RANGE 27 EAST
LEE COUNTY, FLORIDA
DATE: MAY, 2006
DRAWING: B-3288

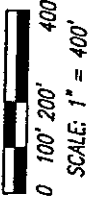
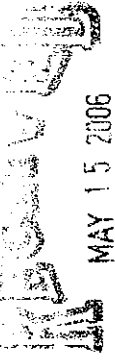
Q. GRADY MINOR AND ASSOCIATES, P.A.
CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS
3800 VIA DEL REY
BONITA SPRINGS, FLORIDA 34134
PHONE: (239) 947-1144 FAX: (239) 947-0375
CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

SHEET: 3 OF 4
DRAWN: F.D.
JOB CODE: WCM
SCALE: 1" = 400'

DCI 2006-00007

MATCHLINE - SEE SHEET 3 OF 4

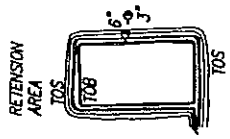
MAY 15 2006



PERMIT CENTER

N03°16'26"W
2652.36'

4315.26'



CONC PAD 6'-0"

CONC PAD 8'-0"

(VACANT)
O.R. 1290
PG. 2241

S88°51'50"W
810.00'

N01°08'34"W
1115.00'

POC
SE CORNER
SECTION 23--

S88°54'25"W
525.38'

POB

CORKSCREW ROAD
(100' RIGHT OF WAY)
O.R. 1026, PAGE 248
O.R. 1037, PAGE 1430
O.R. 1070, PAGE 1487

(VACANT)
UNRECORDED

S88°52'21"W
12.67'

Sketch
of

Applicant's Legal Checked
by Lgm 5/15/2006
(Page 3 of 3)

GRID N: 769866.938
GRID E: 793384.981
LATITUDE: 26°27'03.888"
LONGITUDE: -80°34'50.205"

GRID N: 769825.836
GRID E: 791231.403
LATITUDE: 26°27'03.550"
LONGITUDE: -80°35'13.902"

* THIS IS NOT A SURVEY *

<p>SKETCH TO ACCOMPANY LEGAL DESCRIPTION</p>	
<p>ESTERO GROUP IPD</p>	
<p>SECTION 28, TOWNSHIP 46 SOUTH, RANGE 27 EAST LEE COUNTY, FLORIDA</p>	
<p>DATE: MAY, 2006</p>	
<p>DRAWING: B-3288</p>	

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SHEET: 4 OF 4
DRAWN: F.D.
JOB CODE: WCM
SCALE: 1" = 400'

