

2:00pm

Agenda Item #:

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 12, 2011       Consent       Regular  
    Workshop       Public Hearing

Department:      Planning, Zoning and Building Department

Submitted By:      Planning, Zoning and Building Department

Submitted For:      Planning, Zoning and Building Department

I. EXECUTIVE BRIEF

**Motion and Title:** Staff requests Board direction: on two alternatives to the current process for approving mines in the Everglades Agriculture Area (EAA): 1) Rezoning which would include a Conditional Overlay Zone (COZ) for adding conditions or 2) Strengthening the current Conditional Use process.

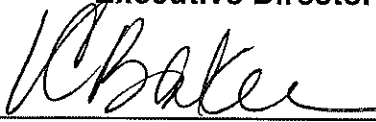
**Summary:** In accordance with BCC direction and facilitation contract with Rafael Montalvo, James Murley and Jean Scott, four public workshops have been held. Representatives of the landowners, mining operators and the environmental community along with other interested parties have participated and consensus was tested but not reached. Staff now seeks BCC direction on how to proceed on ULDC amendments. There are two alternatives to the current process to be considered for approving mines: 1) Rezoning which would include a Conditional Overlay Zone (COZ) for adding conditions or 2) Strengthening the current Conditional Use process. As part of either alternative, criteria would need to be considered which could be either broad based or more detailed. The current moratorium on mining expires August 31, 2011 and cannot be extended. Unincorporated (RB)

**Background and Policy Issues:** After the approval of several new mining operations in the Everglades Agriculture Area (EAA), the BCC directed staff to hold a series of meetings with interested parties to try to reach consensus on how best to review and consider the applications for approval of new mines. The facilitators were contracted to conduct these workshops to develop, if possible, additional or new procedures or criteria. These workshops have consisted of presentations of county, state and federal staff as to review procedures and criteria that are evaluated followed by participants' discussion and feedback. There has been significant input from participants and consensus testing occurred. While a great deal of discussion occurred and many ideas were suggested, no consensus was reached. The consultant report summarizes the outcome of the meetings.

**Attachments:**

- 1. Consultants Report

Recommended by:       6/13/11  
   Executive Director      Date

Approved By:       6/15/11  
   Deputy County Administrator      Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	20 <u>11</u>	20 <u>12</u>	20 <u>13</u>	20 <u>14</u>	20 <u>15</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>_____*</u>	_____	_____	_____	_____
<b>No. ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_

Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:** <sup>\*</sup> Board direction only, no fiscal impact.

**C. Departmental Fiscal Review:** Pat DeGastino

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

WS 6/13/11 OFMB 6/14/11 6/15/11 6/15/11  
Contract Dev. and Control

**B. Legal Sufficiency:**

Legal sufficiency will occur at time of code revision.  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

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## ***PALM BEACH COUNTY***

### ***MINING IN THE EAA WORKSHOP SERIES***

### ***FACILITATORS' SUMMARY of OUTCOMES***

#### **BACKGROUND AND INTRODCTION**

At the direction of the Palm Beach County Commission, the FCRC Consensus Center convened a series of four workshops from January to May of 2011 addressing Unified Land Development Code (ULDC) provisions governing rock mining in the County's portion of the Everglades Agricultural Area (EAA). The purpose of the workshops was to explore whether changes could be made to these provisions that would enjoy the support or acceptance of all stakeholders.

This memo provides:

- a two-page summary of the outcomes of the workshop series on the central question of whether participants were able to agree on refinements to the ULDC;
- an overview of the ULDC framework options considered in the workshops and the principal participant perspectives for each;
- the two sets of decision-making criteria proposed by participants during the workshops and an overview of the principal participant perspectives on each.

More detailed accounts of workshop discussions can be found in the meeting summary for each workshop. Workshop summaries and other materials are available at [www.pbcgov.com/pb/Zoning/MiningWorkshops/index.htm](http://www.pbcgov.com/pb/Zoning/MiningWorkshops/index.htm).

#### **SUMMARY OF OUTCOMES**

By the conclusion of the series, participants had discussed two sets of substantive issues:

- the ULDC framework for decision-making;
- the criteria for decision-making.

#### ***ULDC Framework***

Participants considered four possible options within the ULDC framework for future Commission decisions about mining applications (additional detail on each option is provided in the subsequent *ULDC Framework Options Discussed* section of this memo):

- 1) requirement for a land-use change and concurrent rezoning;
- 2) requirement for a rezoning only;

- 3) strengthened conditional use approach (two versions considered);
- 4) current conditional use approach.

Most discussion in the workshops focused on Option 2 and Option 3.

Environmental group participants continue to prefer Option 1, and are willing to consider Option 2. Landowner and industry participants continue to prefer Option 4, and are willing to consider Option 3. Some industry participants may be willing to consider Option 2, depending on the criteria used in implementing it.

### ***Criteria***

Two distinct proposals for criteria were put forward during the workshops (additional detail on each is provided in the *Criteria Discussed* section of this memo):

- 1) Detailed criteria – This set of proposed criteria was offered by environmental group representatives. They include and build upon many provisions of the current code, with additional detail and stricter substantive requirements. They were submitted as criteria for land-use changes or rezonings.
- 2) Broad criteria – This set of criteria was submitted by landowner representatives. It takes language that is currently in the purpose and intent section of Article 4 of the ULDC, and casts it as additional considerations for Commission decision-making. These criteria were proposed to highlight and strengthen Commission discretion.

All participants remain willing to discuss criteria, and a version of at least some of the proposed criteria may be mutually acceptable to all stakeholder groups. For all of the groups, however, the acceptability of any set of criteria depends on their implementation within an acceptable ULDC framework option.

### **NEXT STEPS**

- Commission direction to retain the current process or proceed with development of one of the alternative ULDC framework options.
- If Commission direction is to proceed with one of the options other than the current process, then:
  - Commission discussion to provide initial guidance regarding criteria;
  - Staff development, with continued stakeholder involvement, of recommended language.

## ULDC FRAMEWORK OPTIONS DISCUSSED

This section presents a fuller description of each of the frameworks discussed in the workshops, and some of the principal participant perspectives regarding them. The discussion of perspectives is intended only to cover key points, and should be understood within the context of the following positions expressed by participating groups:

- For the environmental groups, a continuing conviction that moving to a requirement for a land use change is the most appropriate and effective way to address the issues associated with mining, and to appropriately plan for future mining and for other future uses throughout the EAA. Also, that such a requirement is the best way to provide the Commission with the discretion it has requested to approve strong applications and turn down unsatisfactory ones when appropriate.
- For the landowner and industry representatives, the conviction that current state, regional and local regulatory frameworks are collectively more than adequate to address the potential impacts of mining, and that those frameworks in fact include significant redundancies. Also, that the current county conditional use process provides the Commission the discretion it needs to turn down applications when appropriate.

Some of the participating environmental group and landowner representatives have submitted letters to the Commission expressing in greater detail their preferences and concerns about these options.

### ***Option 1 – Require Comprehensive Plan Land Use Amendment and Concurrent Rezoning***

This framework would entail:

- Removing rock mining from the list of currently allowable uses in the ULDC's AP agricultural zoning classification.
- Adding new land use criteria in the Comprehensive Plan specifically for mining.
- Adding a new zoning classification to the ULDC specifically for mining.
- Developing criteria for land use amendment and rezoning from AP to the new mining classification.
- Requiring applicants for new mines to request comprehensive plan land use amendment and rezoning to the new classification. (Existing mines would be grandfathered in.)

### ***Principal Perspectives***

Environmental group participants believed this framework would provide the greatest opportunity to appropriately plan for future mining and other competing land uses throughout the EAA, through consideration of appropriate locational criteria for mining relative to other land uses, and of long-term and cumulative impacts. They also believed this option provides the greatest degree of Commission discretion.

Landowner representatives emphasized what they believed to be the very large negative land-value impacts of this option for landowners – large enough, in their view, to have Bert Harris Act implications. Landowner representatives also believed this option unduly limited Commission discretion by subjecting every mining approval to state review and potentially to administrative challenges, and that therefore mining approvals would be better addressed in the code.

Some industry representatives shared the view that this option would limit Commission discretion and that mining issues would be better dealt with at the code level. Others did not share this view, but believed that this option would add unnecessary process steps and burdens.

### ***Option 2 -- Require Rezoning Only***

This framework would entail:

- Removing rock mining from the list of currently allowable uses in the ULDC's AP agricultural zoning classification.
- Adding a new zoning classification to the ULDC specifically for mining.
- Potentially developing new criteria for rezoning from AP to the new mining classification.
- Requiring applicants for new mines to request rezoning to the new classification.  
(Existing mines would automatically be assigned the new classification or grandfathered.)

#### *Principal Perspectives*

For environmental group participants this framework, while not as strong as Option 1, provided similar benefits in lesser degree.

Likewise, landowner representatives expressed some of the same concerns as with Option 1 – significant negative land value impacts (again, large enough in their view to have Bert Harris Act implications) although somewhat less severe than with Option 1.

Some industry representatives indicated that their response to this option would depend entirely on the criteria eventually adopted for the rezoning.

### ***Option 3a -- Strengthen Conditional Use Approach: Detailed Criteria***

This approach would entail:

- Retaining the existing basic framework of conditional use approval for rock mines (i.e. retaining the presumption that mining is an appropriate use if the criteria can be met)
- Adding new specific criteria or new detail to existing criteria for rock mine applications.
- Consultant analysis may be required for criteria which staff does not have the expertise to evaluate

#### *Principal Perspectives*

Environmental groups believed that this framework has the potential to provide very limited benefits. They considered that stronger criteria (consistent with those they proposed for Option 1 or Option 2) may provide greater protection against negative mining impacts. However, they believed the continuation of a conditional use framework implies a presumption that mining is an inherently allowed use, and that such a presumption precludes full consideration of whether mining is appropriate in a particular location. They therefore believe that this framework provides inadequate discretion for Commission decision-making.

Landowner representatives believed that current criteria are sufficient to address mining impacts. There were, however, willing to consider some additional or stronger criteria, depending on the burden those criteria would impose on applicants, and provided the criteria were not duplicative or in conflict with other regulatory requirements. Regarding the detailed criteria proposed by the environmental group representatives, they believed the criteria related to need were contrary to

Florida Law, and furthermore that need is a market-based consideration best assessed by the applicants in evaluating the most economic use of their property. Landowner representatives also considered that some of the language in the other proposed criteria would impose a new, unrealistic and inappropriate burden to prove a negative (no negative impacts) in perpetuity.

Industry representatives shared landowner perspectives on this option. Some also indicated that their response to this option would depend entirely on the eventual content of the criteria.

### ***Option 3b -- Strengthen Conditional Use Approach: Broad Criteria***

This approach would entail:

- Retaining the existing basic framework of conditional use approval for rock mines. An applicant would need to meet only the current existing criteria to support an approval.
- Adding new broad criteria drawn from the current purpose statement. These criteria would address long-term and cumulative environmental and water quality impacts, compatibility with surrounding land uses, and public welfare. (The purpose statement is deemed to be implemented by the criteria, and so is not currently used by staff to evaluate applications).
- Allowing opponents of the application to present evidence that the application does not meet the broad criteria. (Note that this option does not require staff to evaluate the proposal against the new broad criteria).
- Possibly developing guidelines for timely submission of evidence supporting a denial, and for responses to that evidence.
- Stating in the ULDC that the Commission may deny an application for rock mining if it finds that these broad criteria have not been met based upon evidence presented by opponents, regardless of the application's performance on the narrower existing criteria.

### ***Principal Perspectives***

The environmental groups do not oppose the broad criteria proposed by the landowners, but do not believe they are sufficient. They also question whether this approach would provide the level of Commission discretion described, given that a conditional use framework under which mining is an inherently allowed use would continue in place. As with Option 3a they believed the continuation of a conditional use framework implies a presumption that mining is an appropriate use, and that such a presumption precludes full consideration of whether mining is appropriate in a particular location. They also expressed strong reservations about the potential for imposing a burden of proof on citizens who oppose a mining application. They therefore believe that this framework provides inadequate discretion for Commission decision-making.

Landowner representatives reiterated their belief that current criteria are sufficient to address mining impacts. They were, however, willing to consider additional or stronger criteria, depending on the burden those would impose on applicants. Some landowners prefer the broad criteria approach (Option 3b) to more detailed criteria (Option 3a). Those landowners who supported the broad criteria approach believe that of the changes to current process that were discussed, this option best addresses the Commission's desire for additional discretion without imposing additional burdens on applicants.

Industry representatives also reiterated their belief that current criteria are sufficient to address mining impacts, and some again indicated that their response to this option would depend entirely on the eventual content of the criteria. In addition, some industry representatives expressed

concern that although the option as proposed does not impose an explicit additional burden of proof on applicants, repeated use of the broad criteria by opponents might result in de facto additional costs and burdens to applicants as they address likely objections based on those criteria early in the application process. These industry representatives also believed such an outcome likely to be duplicative of other regulatory processes.

#### ***Option 4 -- Retain Current Process***

This approach would entail:

- Retaining the existing framework of conditional use approval for rock mines (i.e. retaining the presumption that mining is an appropriate use if the criteria can be met).
- No changes to ULDC.

#### ***Principal Perspectives***

Environmental groups believe the current conditional use process does not provide adequate opportunities for the Commission to consider whether the location of a proposed mine is appropriate, or to consider long term and cumulative water quality and economic impacts. They also believe that the conditional framework implies a presumption that mining is an appropriate use if the (in their view inadequate) conditions can be met and, therefore, does not provide sufficient discretion for Commission decision-making.

Landowner and industry representatives believe that current state, regional and local regulatory frameworks are collectively more than adequate to address the potential impacts of mining and that the current county conditional use process provides the Commission the discretion it needs to turn down applications when appropriate.

### **CRITERIA DISCUSSED**

On the following pages are criteria proposed by environmental group participants (detailed criteria), followed by those proposed by some of the landowner representatives (broad criteria). It should be noted that the detailed criteria submitted by the environmental group participants were proposed for use with requirements for a land use change or a rezoning. The broad criteria submitted by the landowner representatives were proposed for use with a strengthened conditional use approach. The versions included here are the most recent versions submitted by the participants, although variations of each were considered in the discussions.

It should also be noted that while versions of both proposals were available at Workshop 4, the individual criteria in each proposal were not discussed in detail. Their inclusion of these proposals here does not indicate their acceptance by parties other than the ones submitting the proposals. Principal perspectives on these criteria are outlined in the discussion of Option 3a and Option 3b above.

All participants remain willing to discuss criteria further, and a version of at least some of the proposed criteria may be mutually acceptable to all of the stakeholder groups. For all of the groups, however, the acceptability of any set of criteria depends on their implementation within an acceptable ULDC framework option.



**ENVIRONMENTAL GROUP PARTICIPANTS DRAFT PROPOSAL  
DETAILED CRITERIA FOR PBC ROCK MINING ZONING REVISION**

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For properties where a zoning category is proposed and where Type III excavations as established in the Unified Land Development Code the following shall apply:

1. These properties shall be required to amend to a Mining zoning designation,
2. The new Mining zoning districts shall contain at minimum the following criteria, in addition to other applicable criteria in the ULDC:
  - a. The mining land use change and zoning designation shall not extend past the physical boundaries of the property requested for the specific mining project proposal.
  - b. The property shall be located in an area that is suitable for mining based upon its geology, environmental impacts, potential impact on reasonably foreseeable future adaptive management options for the Comprehensive Everglades Restoration Plan and other regional water management projects, considering short and long-term impacts, and based upon, but not limited to, information available from the South Florida Water Management District the U.S. Army Corps of Engineers, and other state and federal agencies with management responsibilities over components of the Everglades ecosystem.
  - c. Demonstration that excavation and operation of the proposed mine will be compatible with adjacent existing and future land uses; The determination of compatibility shall be based on, but not be limited to, an assessment of any negative impacts to surrounding land uses with regards to density, intensity, function, air quality, water quality, noise, traffic, aesthetics, vibrations, smoke, odors, radiation, property values, interference with ecosystem restoration goals, or any other land use conditions.
  - d. Demonstration that excavation and operation of the proposed mine will be conducted in an environmentally sound manner, such as, but not limited to, depth restrictions and impacts on littoral zones, ground and surface water quality and quantity, distribution of dissolved chlorides, nutrients, heavy metals and other potentially harmful materials, or negative impacts existing and future wellfields and private wells.
  - e. Demonstration that excavation and operation of the proposed mine will be performed to protect presumed and previously unidentified archeological sites, as defined in the Unified Land Development Code, from destruction until the site has been examined, cataloged and recorded, and the preservation status determined, pursuant to ULDC Sec.9.A.2.A.2.
  - f. Demonstration that the property is geographically located to minimize distances to major transportation facilities to reduce impacts on roadways and residential neighborhoods, and shall not interfere with existing traffic patterns in the County.
  - g. Mining activities will be limited to transportation routes which are primarily on roadways that are currently operating as major arterials or collectors which can withstand the effects of transporting the volume and weight of the extracted material.
  - h. Demonstration of consistency with other applicable provisions in the Plan and the Code.
  - i. Lands shall be granted a Mining land use approval only to support public roadway projects or agricultural activities or regional water management projects for the stated purpose of ecosystem restoration, regional water supply or flood protection, on sites identified by the South Florida Water Management District or the U. S. Army Corps of Engineers where such uses provide viable alternative technologies for water management. Demonstrated need for such materials for these projects within Palm Beach County must be provided and documented.

**DRAFT LANGUAGE AND APPROACH TO BROAD CRITERIA/CONSIDERATIONS  
FOR CONDITIONAL USE PROCESS  
SUBMITTED BY A PARTICIPATING LANDOWNER REPRESENTATIVE**

Facilitator's note: The language below was submitted after Workshop 4, but is consistent with the concept as it was discussed during the workshop series. It is included here as the most fully developed version of the proposed concept.

Article 2 Section 2 Subsection D

D. Special Standards for Type III Excavation in AP Zoning District.

1. The B.C.C. may consider the following issues in making a determination to approve or deny a Conditional Use A Application for Type III Excavation. The Applicant shall not be required to provide evidence with respect to these Special Standards to support an approval by the B.C.C. but the B.C.C. may consider evidence presented with respect to the Special Standards to support a denial.
  - a. Whether the proposed mining and excavation activities will materially and adversely impact the health, safety and welfare of the citizens of Palm Beach County?
  - b. Whether the proposed mining and excavation activities will have an immediate or long term material and adverse (i) environmental, (ii) economic or (iii) land practices impact?
  - c. Whether existing or future beneficial use of surrounding properties will be materially and adversely impacted by the proposed mining and excavation activities?
  - d. Whether the proposed mining and excavation activities will result in a material and adverse (i) public safety hazard, (ii) source of water resource degradation, or (iii) pollution?