

## **MEMORANDUM**

**Date:** November 9, 2022

**To:** B. Roberts  
Plan Reviewer

**From:** M. Evans *ME*  
Senior Engineer

**Subject:** **CEMEX Alico Quarry Extension Phase 3D Mine Excavation  
Planned Development (MEPD) Transportation-Related  
Deviation Requests – Analysis and Recommendations**  
Case No. DCI2021-00009  
STRAP No. 06-46-26-00-00001.0000 (lowest)

### **Purpose**

The purpose of this memorandum is to provide substantive comments related to Development Services Section staff review of subject-case proposed deviation requests that relate to transportation elements received to date by Lee County through formal written submittals from the applicant.

This memorandum does not specifically provide an analysis of traffic associated with the site as the traffic study requirement for the project was waived under case GEN2020-00231, since the applicant did not request an increase in development intensity related to the site's materials processing use.

### **Applicant Proposed Deviation Review**

Per the Lee County *Land Development Code* (LDC), Section 34-145(d)(4)a.2.c), the hearing examiner must find "that each requested *deviation*: 1) Enhances the achievement of the objectives of the planned development; and 2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare."

In the subject case, the applicant proposed a number of deviations from the requirements of the LDC. Staff discussion with respect to select deviations follow.

#### **Deviations 4-A**

Deviation 4-A requests relief from LDC, Section 12-116(b)(2), which requires the construction of infrastructure, including permanent count stations, to monitor daily vehicular trips accessing the mine site.

Since the intent of the subject project is to combine all phases of the existing and proposed mining operations under a single approval, the applicant should be

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required to meet the requirements of this portion of the LDC. Lee County Zoning Resolution Z-13-026, Section B.19., allows for transportation-related deviations from the LDC as specifically applied to mine traffic associated with Phase 3C and does not appear to apply to the entire mining operation as is considered in the subject project application.

Other mine sites have been required to comply with this portion of the LDC, and the general mining operations of this site appear no different from other approved mining sites. Requiring continuous traffic monitoring through the use of permanent count stations at this and other mine sites fosters transparency in that local/state agency staff and the public may be better aware of current and future mining operational changes that affect traffic volumes in the area at any given point in time. If this deviation request is approved, it may potentially set a precedent and send the wrong message to the general public that monitoring heavy truck traffic is unimportant and unnecessary with respect to promoting traffic safety, especially in a motoring environment where a high percent of heavy commercial vehicles share the road with passenger vehicles in this high-growth area of Lee County. In addition, if this deviation request is approved, this mine site will not consistently meet this and other LDC requirements that have been accepted by other mine excavation planned developments in Lee County.

The intent of this portion of the LDC appears to be for county staff to accurately monitor the volume and classification of daily mine-related traffic. This information may be used to determine the adequacy of Alico Road turn lanes at the site access to ensure compliance with LDC, Section 12-107(4) which states that "mining activities, and industrial uses accessory to mining activities, must...have adequate...transportation facilities". According to Lee County Administrative Code AC-11-4 "Turn Lane Policy", Section I, adequate turn lane lengths enhance traffic safety by allowing "for the safe execution of speed change maneuvers and the storage and protection of left and right turning vehicles" which promotes the purpose of these turn lanes as noted in LDC, Section 12-116(b): "to protect public safety and welfare". Since continuous 24-hour daily traffic counts are much more accurate than temporary counts that may be taken over a few hours and/or days of a given year, this permanent count station data may be more useful in reviewing turn lane adequacy. In addition, since each mine in unincorporated Lee County is sited in a different location, and may have somewhat different operational characteristics and business models as compared to other mine sites, historic traffic count information specific to this mine may be used by the applicant when producing traffic studies for future site-related planned development amendments, mine operation permits, and mine operation permit renewals as required by LDC, Section 12-116(a).

In addition, LDC Section 12-118(a) and (b) indicates that mine-related monitoring "at consistent intervals over time [allows for] the County and applicant/mine operator...[to]...have a realistic opportunity to discover and address adverse impacts

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precipitated by the mine activity" and help "determine whether certain actions or changes are appropriate to increase compatibility of ongoing mine activity with its surroundings."

Further, a continuous record of current and historic mine-related traffic counts may aid law enforcement staff in targeting enforcement efforts and researching violations which helps promote and protect public safety and welfare.

It should be noted that since the original mine approvals in the late 1980s and early 1990s, land uses in proximity to the mine site have greatly changed, especially within the last few years. Starting with the approval of *The Lee Plan* amendments CPA2014-00004, Wildblue Alico West, and CPA2015-00001, Corkscrew Farms, the character of this area has changed from one with sparse residential development to one with multiple large residential and mixed-use planned developments along both Alico Road and Corkscrew Road. The land use changes in the area in proximity to the subject site are further noted in the May 22, 2019 technical assistance comment letter from the Florida Department of Transportation with respect to *The Lee Plan* amendment CPA2018-10014, Limerock Mining, which states as follows:

"As the coastal communities west of I-75 build-out, new residential and mixed-use development is spreading east of I-75 at a rapid pace. Many of these new developments are beginning to encroach within areas populated by existing mines. Most of these areas are currently served by a limited capacity roadway network resulting in heavy freight vehicles (dump trucks) and automobiles sharing lanes. The blending of dump trucks and local trips may create congestion and operational inefficiencies within the roadway network."

### Deviation 5-A

Deviation 5-A requests relief from LDC, Section 12-116(c), which requires continuous truck hauling monitoring and enforcement, developing and enforcing a truck hauling operation plan, and maintaining, repairing, and replacing the site access within county-maintained road right-of-way.

Since the intent of the subject project is to combine all phases of the existing and proposed mining operations under a single approval, the applicant should be required to meet the requirements of this portion of the LDC. Lee County Zoning Resolution Z-13-026, Section B.19., allows for transportation-related deviations from the LDC as specifically applied to mine traffic associated with Phase 3C and does not appear to apply to the entire mining operation as is considered in the subject project application.

Since both Deviations 4-A and 5-A appear interrelated, many of staff's above points with respect to Deviation 4-A equally apply to Deviation 5-A.

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The LDC, Section 12-116(c)(1) and (2), specifically requires the mine operator to contract with law enforcement personnel to "provide continuous...monitoring of truck traffic entering and exiting the mine", and to "develop and enforce a truck hauling operation plan". To request a deviation from this LDC requirement may be viewed as unreasonable, since this code provision specifically relates to public safety. While the Lee County Sheriff's Office (LCSO) may or may not have a commercial vehicle enforcement division or staff specifically trained in this area, their law enforcement staff is trained and qualified to enforce motor vehicle-related laws. The LCSO is also not the only law enforcement agency operating in unincorporated Lee County. The Florida Highway Patrol's Office of Commercial Vehicle Enforcement troopers are empowered by current Florida statute "to require the driver of any commercial vehicle operated to stop and submit to an inspection and enforce the traffic laws of this state within an emphasis on violations committed by commercial vehicles" (see <https://www.flhsmv.gov/florida-highway-patrol/commercial-vehicle-enforcement/> for supporting information). Heavy commercial vehicles (HCVs) have different size and operating characteristics as compared to passenger vehicles (PVs) which may pose traffic safety issues when a mix of both vehicle types operate in the same motoring environment. For instance, HCVs require longer acceleration and braking distances, and have limited driver sight visibility due to their larger weight and/or size as compared to PVs. For this reason, HCVs may travel at lower speeds than PVs – a speed differential that may have a negative impact on traffic safety. Commercial vehicle enforcement activities in proximity to the mine site, especially due to its higher ratio of HCVs-to-PVs, may be considered of great importance in promoting traffic safety and reducing crashes.

The LDC, Section 12-116(c)(3), specifically requires the mine operator to maintain, repair, and replace the site access within the county-maintained road right-of-way. As with the other provisions of this section of the LDC related to transportation impact mitigation, to request a deviation from this LDC requirement may be viewed as unreasonable, since this code provision specifically assigns responsibility to maintain, repair, and replace infrastructure that primarily benefits the mine operator to said operator. The Lee County taxpayer should not in any way be responsible for costs associated with the mine operator's site-related improvements.

**Deviation 14-D**

Deviation 14-D requests relief from LDC, Section 12-116(b)(1), which requires left- and right-turn lanes at the mine access along Alico Road.

Since the intent of the subject project is to combine all phases of the existing and proposed mining operations under a single approval, the applicant should be required to meet the requirements of this portion of the LDC. Lee County Zoning Resolution Z-13-026, Section B.19., allows for transportation-related deviations from

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the LDC as specifically applied to mine traffic associated with Phase 3C and does not appear to apply to the entire mining operation as is considered in the subject project application.

Since Deviations 4-A, 5-A, and 14-D appear interrelated, many of staff's above points with respect to Deviations 4-A and 5-A equally apply to Deviation 14-D.

As with the other provisions of LDC, Section 12-116, related to transportation issues, to request a deviation from this LDC requirement may be viewed as unreasonable, since turn lanes as stated in this provision are required "to protect public safety and welfare". While a relatively long eastbound Alico Road left-turn lane currently exists at the site access, a westbound right-turn lane does not. When the mine site was first permitted in the late 1980s and early 1990s, it may be argued that much of the mine traffic traveled to and from the west, so a westbound right-turn lane at this location was not necessary. However, with recent land use changes in proximity to the site and an accelerated increase in traffic volumes due to recent rapid residential and mixed-use planned development growth along the Alico Road and Corkscrew Road corridors south and east of the mine site, the need for a westbound Alico Road right-turn lane at the site access is likely of even greater importance to promote and protect public safety and welfare.

It is highly unusual to consider deviations from requirements for site-related improvements, such as turn lanes, under a rezoning case. This deviation request should better be considered at time of local development order, a time when the schedule and scope of the planned Alico Road widening project in proximity to the subject site will be more refined.

### **Summary and Recommendations**

In summary, after considering the information in the applicant's proposed deviation request and weighing the above factors of this memorandum, **Development Services Section staff recommends DENIAL of the applicant's Deviation 4-A, 5-A, and 14-D request.**

MJE:mje

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Department of Community Development  
Development Services Section

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