

DOVER, KOHL & PARTNERS  
t o w n   p l a n n i n g

**TRANSMITTAL LETTER**

**Date:** May 18, 2009

**TO:** **Mary Gibbs, Director**  
**Mailing Address:** Lee County Department of Community Development  
1500 Monroe Street  
Fort Myers, FL 33901  
**Phone Number:** (239) 533-8345

**FROM:** Jason King, Project Manager; Dover, Kohl & Partners  
**Phone Number:** (305) 666-0446

**RE:** **Proposed Lee Plan Amendments for Southeast Lee County**

Ms. Gibbs,

Enclosed please find a copy of the *Proposed Lee Plan Amendments for Southeast Lee County* for distribution. This is the first in a series of reports to implement the DR/GR planning effort for the final phase of the *Comprehensive Study for the Lee County DR/GR Area*.

In total the reports shall include:

- *Proposed Lee Plan Amendments for Southeast Lee County*, which contains detailed amendments to maps and policies in the Lee Plan and a summary of the data and analysis upon which they are based.

Two additional reports are nearly complete and will be submitted in June 2009:

- *Transferable Development Rights in Southeast Lee County*, which analyzes the feasibility of a transferable development rights program and provides detailed designs for potential rural and mixed-use communities.
- *Natural Resource Strategies for Southeast Lee County*, which addresses best farming practices, land acquisition and restoration, mine reclamation standards, and innovative mining approaches.

An additional report will be forthcoming directly from DHI Water & Environment Inc.:

- *Comprehensive Hydrological Study of the Lee County's Southeastern Density Reduction / Groundwater Resource Area*, which documents the creation of an integrated surface and groundwater model and analyzes land-use alternatives for the DR/GR from a hydrological perspective.

A final report will contain proposed implementing regulations and will be completed this fall:

- *Proposed Land Development Code Amendments for Southeast Lee County*, which contains detailed code amendments to carry out the Lee Plan amendments and other recommendations of these reports.

On behalf of the entire project team, thank you for the opportunity to complete this important work for Lee County.

Thank You,

A handwritten signature in black ink, appearing to read "Jason King". The signature is stylized with a large initial "J" and a long, sweeping underline.

Project Manager

**Jason King, AICP, CNU**  
Dover, Kohl & Partners  
(305) 666-0446  
[www.doverkohl.com](http://www.doverkohl.com)

**MEMORANDUM**  
FROM THE  
**DEPARTMENT OF**  
**COMMUNITY DEVELOPMENT**

DATE: May 20, 2009

To: Board of County Commissioners

FROM: Mary Gibbs  
Mary Gibbs, Director

**RE: Proposed Comprehensive Plan Amendments  
Southeast Lee County DR/GR**

Attached please find a copy of the report recently received from our consultant pertaining to the *Proposed Lee Plan Amendments for Southeast Lee County*. This report is part of the final phase of the DR/GR study. The amendments are scheduled at the Local Planning Agency on June 3<sup>rd</sup> and June 22<sup>nd</sup>. They will be included in the upcoming round of Comprehensive Plan amendments at the County Commission on September 23<sup>rd</sup>.

Please feel free to call me if you have any questions. The report is posted on our website and interested parties have been notified.

copy w/out attachments:

Karen Hawes, Interim County Manager  
Pete Winton, Assistant County Manager  
Paul O'Connor, Planning Director  
Matt Noble, Principal Planner, Planning  
David Owen, County Attorney

*Attachment: Report - Proposed Lee Plan Amendments for Southeast Lee County*

**MEMORANDUM**  
FROM THE  
**DEPARTMENT OF**  
**COMMUNITY DEVELOPMENT**

DATE: May 21, 2009

To: STAFF DISTRIBUTION LIST

FROM: 

Mary Gibbs, Director

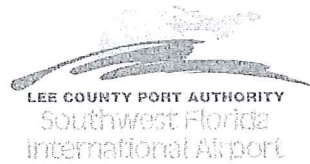
**RE: Proposed Comprehensive Plan Amendments  
Southeast Lee County DR/GR**

Attached please find a copy of the report recently received from our consultant pertaining to the *Proposed Lee Plan Amendments for Southeast Lee County*. This report is part of the final phase of the DR/GR study. The amendments are scheduled at the Local Planning Agency on June 3<sup>rd</sup> and June 22<sup>nd</sup>. They will be included in the upcoming round of Comprehensive Plan amendments at the County Commission on September 23<sup>rd</sup>.

DISTRIBUTION LIST

Pete Winton, Assistant County Manager  
Paul O'Connor, Planning Director\*  
Matt Noble, Principal Planner, Planning\*  
Pam Houck, Zoning Director  
Chip Block, Principal Planner, Zoning  
Pete Eckenrode, Development Services Director  
Becky Sweigert, Principal Planner, Environmental Sciences  
David Owen, County Attorney  
Donna Marie Collins, Assistant County Attorney\*  
Dawn Lehnert, Assistant County Attorney\*  
John Renner, Assistant County Attorney  
Diana Parker, Hearing Examiner  
Roland Ottolini, Natural Resources Director  
Wayne Daltry, Smart Growth Director\*  
Doug Meurer, Utilities Director  
Scott Gilbertson, DOT Director\*  
Emily Underhill, Lee County Port Authority

\* attachment distributed with LPA meeting packet for June 3<sup>rd</sup>



**TO:** Matt Nobel  
Lee County Div. of Planning

**FROM:** Ellen Lindblad *EL*  
Planning & Environmental Compliance

**DATE:** June 15, 2009

**SUBJECT:** Proposed Lee Plan Amendment

**RECEIVED**  
JUN 16 2009

COMMUNITY DEVELOPMENT

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Matt: Below are the LCPA comments to the Dover Kohl "Proposed Lee Plan Amendments for Southeast Lee County."

**1. Text Amendments:**

**(a) Amend the Vision Statements for Planning Communities #10 (Gateway/Airport) and #18 (Southeast Lee County) so that these statements accurately reflect all of the following amendments for the Lee Plan.**

*This would be to take everything east of the airport boundary (including Timber Trails properties which the LCPA owns) out of the Gateway/Airport planning community and put them into the Southeast Lee County Planning Community.*

*At this time the airport does not have any definite plans for these lands which were purchased to alleviate possible noise issues in the future. The noise contours have since changed and these lands are no longer needed for that use. The airport has not decided what the future plans are for this area, which makes it difficult to make a determination if being in the Southeast Planning Community would have any adverse effect on the property.*

**2. Map Amendments**

**Map 14 – Proposed "Future Limerock Mining" Overlay.**

*The airport would have to address various issues with Areas A and B on the "Proposed Future Limerock Mining Overlay" that could have adverse impacts to the approaches to our existing and planned future runways (both northeast and southwest of RSW). Some of these issues have FAA regulations and guidance criteria. The LCPA needs to make sure these are being followed in accordance with grant assurances from the FAA. The main issues that will need to be addressed are:*

- **Height Restrictions:** *The ongoing use of tall construction equipment (dredges, etc.) and buildings may have issues with height restrictions and need to be in compliance with FAA Part 77 "Objects Affecting Navigable Airspace," and FAA AC 7460 "Obstruction, Marking and Lighting;"*
- **Lights:** *If there are any operations at night the glare from the lights could be a problem for aircraft and the water in the pit during the afternoon may also cause glare for pilots;*

- **Wildlife Attractants:** *The FAA has specific guidelines concerning wildlife attractants on or near airports (AC 150/5200-33B). The type of side slopes of lakes within developments within a 10,000 foot buffer is a major issue with the FAA. Lake side slopes need to be in accordance with the attached FAA cross-section*
- **Blasting/Dewatering/Dust:** *Blasting and/or dewatering can have adverse impacts to adjacent lands and the airport has had issues in the past with sinkholes forming in other areas of the airport. With areas A & B being so close to runways this could cause issues with the runway infrastructure. Concrete batch plants and rock crushing facilities, at or near the mines, may create dust issues for approaching and departing aircraft;*
- **Radar/NAVAID:** *We cannot have any kind of equipment or tall structures that would interfere with any of our radar/navigation equipment.*

*Mining has the potential to affect many of the criteria listed above and the airport could not support any use that would adversely impact the ability to provide current and future airport operations. These criteria would need to be addressed prior to any development in this area, along with any land use compatibility issues associated with noise.*

Call if you have any questions.

**From:** Onorato, Dave [mailto:Dave.Onorato@MyFWC.com]  
**Sent:** Thursday, July 09, 2009 10:33 AM  
**To:** amartin@leegov.com  
**Cc:** Nancy Payton  
**Subject:** Florida panther telemetry data in the DRGR

Aaron:

Attached are 2 pdfs with panther telemetry data in the DRGR area. One filed focuses on the RCH plot and I have circled the location that was collected on that parcel. The other is a broader view of panther use of habitat in the area. **Most of the data is from panthers we have collared in that region in the last 2 years with GPS collars, but there is also some historical data.** The main thing to remember with regards to panthers in the Lee County is that there is really a very limited amount of habitat that remains, and remaining parcels are being encroached upon from just about every side. **So, most likely, every piece of remaining habitat in the DRGR that is lost could have ramifications on the persistence of panthers in the area.**

Don't hesitate to contact me if you need additional assistance.  
Dave

**From:** Onorato, Dave [mailto:Dave.Onorato@MyFWC.com]  
**Sent:** Thursday, June 25, 2009 4:04 PM  
**To:** Noble, Matthew; Nancy Payton  
**Subject:** RE: DRGR Panther Map

Matt:

See updated map. The recent panthers 2007-09 are designated as F1, F2, M1, M2 and comprise most of the points. The yellow dots are made up of varied panthers over the years that periodically used those areas. **The 4 recent panthers used the areas in CREW, Corkscrew, and the DRGR as their primary home ranges.**

Dave

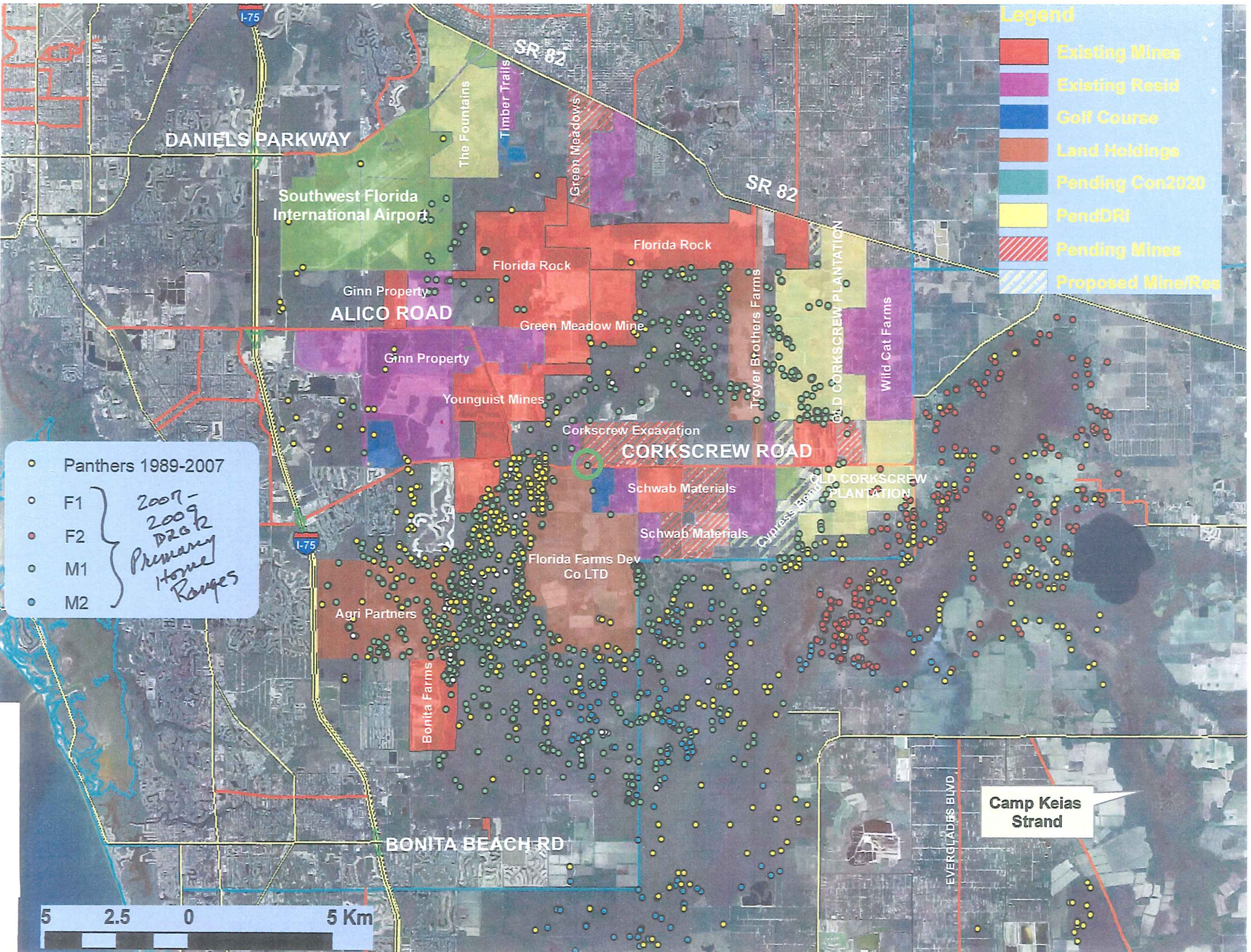
Dave Onorato- Associate Research Scientist  
Florida Panther Project  
Fish and Wildlife Research Institute  
Florida Fish and Wildlife Conservation Commission  
566 Commercial Boulevard  
Naples, FL 34104 USA  
phone: (239) 643-4220  
fax: (239) 643-0385  
[dave.onorato@myfwc.com](mailto:dave.onorato@myfwc.com)

**Legend**

- Existing Mines
- Existing Resid
- Golf Course
- Land Holdings
- Pending Con2020
- PendDRI
- Pending Mines
- Proposed Miner/Res

- Panthers 1989-2007
- F1
- F2
- M1
- M2

*2007-2009  
D2G R  
Primary  
Home  
Ranges*



**Camp Keias Strand**





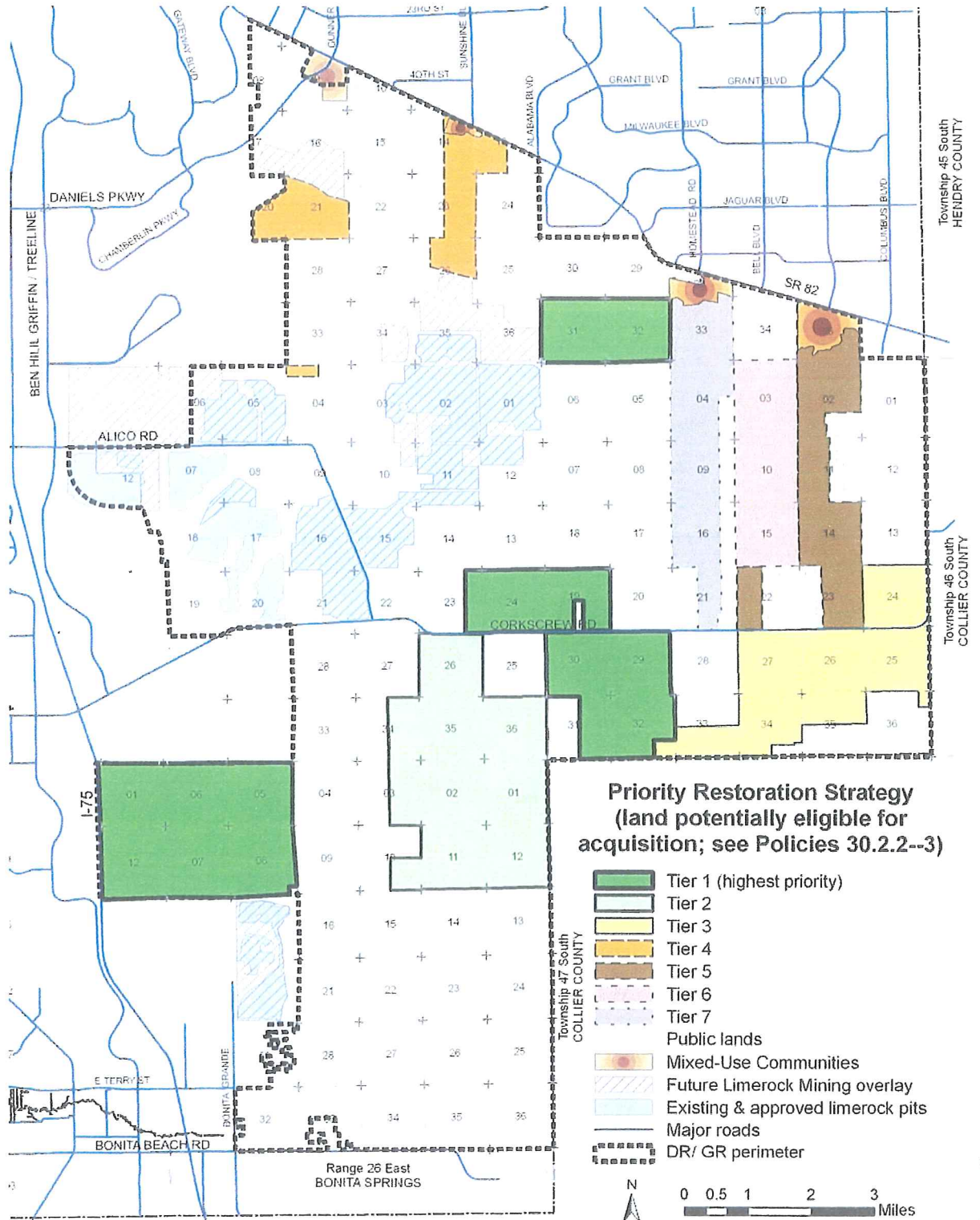


Figure 2

DIVISION OF PLANNING  
MEMORANDUM



LEE COUNTY  
SOUTHWEST FLORIDA

**to:** Local Planning Agency  
**from:** Paul O'Connor, AICP, Director  
**Subject:** CPA 2008-06 – DR/GR Amendments  
**date:** July 17, 2009

As requested at the June 22<sup>nd</sup> LPA meeting, attached please find a strikethrough/underlined version of the proposed amendment language for the Southeast Lee County DR/GR plan amendment. The document is formatted as follows:

- Where Planning Staff and the consultant Dover, Kohl & Partners agree, the proposed language is shown across the entire page;
- Where there were differences of opinion on the proposed language, the page is split into two columns. The left hand column contains the Dover, Kohl & Partners' proposal. The right hand column contains Staff's proposal; and,
- Under the two columns, and sometimes under the agreed to policies, is a dialog box that contains a Staff discussion, explanation, modified revision, update, or clarification, often followed by the consultant's concurrence.

As you will see in reviewing the document, there are only a few areas where Staff and the consultant differ on their recommendations. The remaining issues are:

- Policy 1.1.7, Mining in the Industrial Development Future Land Use Category;
- Policy 1.2.2, Inclusion of mining in the Tradeport Future Land Use Category (please see the discussion under sections (b) and (m));
- Policy 30.1.3, The elimination of residential density on land zoned for limerock mining pits;
- Policy 114.1.12, Independent wetland review;
- Section (h) map amendment of Public Facilities near the County's water plant;
- Section (m) "Future Limerock Mining Areas;" and,
- Section (n), Easterly Rural Communities locations.

Also attached to this memorandum is a hard copy of a composite map with all of the proposed overlays, the Preferred Mining Areas, Restoration Areas, Rural and Mixed Use Communities, and so on. An electronic Adobe file of this map is posted on the County's web site at:

<http://www3.leegov.com/dcd/CommunityPlans/SELCDRGR/CPA2008-06/CompositeMapsForPresentation.pdf>.

The components are contained on layers which can be turned on or off to evaluate "what if" scenarios with the overlays. I believe you will find this to be a useful tool.

A printable version of the map is here:

<http://www3.leegov.com/dcd/CommunityPlans/SELCDRGR/CPA2008-06/CompositeMapsForPrinting.pdf>

**(a) Amend the Vision Statements for Planning Communities #10 (Gateway/Airport) and #18 (Southeast Lee County) so that these statements accurately reflect all of the following amendments to the Lee Plan**

The Lee Plan's land use accommodation is based on an aggregation of allocations for 22 Planning Communities. These communities have been designed to capture the unique character of each of these areas of the county. Within each community, smaller neighborhood communities may exist; however, due to their geographic size, a planning community could not be created based on its boundaries. These communities and their anticipated evolutions are as follows:

- 10. Gateway/Airport** - This Community is located South of SR 82, generally east of I-75, and north of Alico Road including those portions of the Gateway development that either have not been or are not anticipated to be annexed into the City of Fort Myers, the Southwest Florida International Airport and the properties the airport expects to use for its expansion, the lands designated as Tradeport, and the land designated as Industrial Development west of I-75 north of Alico Road. In addition to these two land use designations, properties in this community are designated New Community (the Gateway development), Airport, ~~Density Reduction/ Groundwater Resource (primarily the anticipated airport expansion areas)~~, Rural, and General Interchange. The road network in this community is planned to change dramatically over time creating access to and from this community to the north, south, and east without relying on I-75.

There are three distinct areas within this community. The Gateway portion of this community is the area where residential uses will occur. Gateway will be a thriving, nearly built-out, mixed-use community in 2020. The population of this community is anticipated to grow substantially from today to 2030.

The second area in this community is the Southwest Florida International Airport. The airport will be greatly expanded by 2030. The expanded airport will have a second parallel runway and a new terminal building that will more than double the existing capacity of the airport. Development will be guided by the Airport Layout Plan (as established through the airport master plan process) consistent with the Southwest Florida International Airport Proposed Development Schedule (Table 5(a)) and all other Lee Plan provisions.

The airport expansion and the completion of Florida Gulf Coast University are expected to energize the remaining area in this community, including the commercial and industrial components. This portion of the community is to the south and west of Gateway and the airport and extends west of I-75 along Alico Road. While this segment of the community is not expected to build out during the timeframe of this plan, the area will be much more urbanized with hi-tech/clean industry businesses.

- 18. Southeast Lee County** - As the name implies, this Community is located in the southeast area of Lee County, south of SR 82, north of Bonita Beach Road, east of I-75 (excluding areas in the San Carlos Park/Island Park/Estero Corkscrew Road and Gateway/Southwest Florida International Airport Communities), and west of the county line. With very minor exceptions, this the exception of a few Public Facilities, the entire community is designated as Density Reduction/Groundwater Resource, Conservation Lands (both upland and wetlands), and Wetlands on the Future Land Use Map. This "community" consists of regional mining operations, active and passive agricultural uses, public wellfields and water treatment plants, significant contiguous tracts set aside for preservation, a private golf course, and very large lot residential home sites. The one exception is the Citrus Park Community. This community is not expected to change in character through the year 2030. Through the year 2030, Southeast Lee County will change dramatically. Mining pits will double in size as the northwest portion serves as the major supplier of limerock aggregate for southwest Florida, an activity that continues to generate significant truck traffic especially on Alico Road. The remainder of Southeast Lee County will continue as the county's primary agricultural region and home to its largest (and still expanding) natural preserves. Residential and commercial development will not be significantly increased except in very limited areas where development rights are being concentrated by this plan. Some existing farmland will be restored to natural conditions to increase the natural storage of water and to improve wildlife habitat.

**(b) Amend the Future Land Use Element, including a new goal with objectives and policies applying to Southeast Lee County**

Original Dover-Kohl proposal:	Staff report proposal:
<p><b>POLICY 1.1.7:</b> The <u>Industrial Development</u> areas play an important role in strengthening the county's economic base and will become increasingly important as the county grows in size and urban complexity. To a great extent these are the areas to which Lee County must look for expanded job opportunities, investments and production opportunities, and a balanced and sufficient tax base. These areas have special locational requirements that are more stringent than those for residential areas, including transportation needs (e.g., air, rail, highway); industrial levels of water, sewer, fire protection, and other urban services; and locations that are convenient for employees to reach. Whereas the other Future Urban Areas will include a broad combination of residential, commercial, public, and limited industrial land uses, the Industrial Development area is to be reserved mainly for industrial activities per se, as well as for selective land use mixtures such as the combined uses of industrial, manufacturing, research, properly buffered recreational uses (except where precluded by airport hazard zone regulations), and office complexes (if specifically related to adjoining industrial uses) that constitute a growing part of Florida's economic development sector. <del>New natural-resource-extraction-(mining)-activities-and fill dirt operations must be approved through the <u>Mine Excavation Industrial Planned Development rezoning process</u></del>. Retail or wholesale of products manufactured or processed upon the premises may be allowed at a ratio of 1 square foot of commercial uses to 10 square feet of industrial use in association with a Planned Development. Ancillary minor retail commercial uses intended to support the surrounding industrial land uses may not exceed 30,000 square feet per development; and, at buildout, may not exceed more than ten percent (10%) of the total acreage of the lands designated as Industrial Development areas in each community outlined in Map 16. Residential uses, other than bona fide caretaker residences, are not permitted in this category except to the extent provided in Chapter XIII of the Plan.</p>	<p><b>POLICY 1.1.7:</b> The <u>Industrial Development</u> areas play an important role in strengthening the county's economic base and will become increasingly important as the county grows in size and urban complexity. To a great extent these are the areas to which Lee County must look for expanded job opportunities, investments and production opportunities, and a balanced and sufficient tax base. These areas have special locational requirements that are more stringent than those for residential areas, including transportation needs (e.g., air, rail, highway); industrial levels of water, sewer, fire protection, and other urban services; and locations that are convenient for employees to reach. Whereas the other Future Urban Areas will include a broad combination of residential, commercial, public, and limited industrial land uses, the Industrial Development area is to be reserved mainly for industrial activities per se, as well as for selective land use mixtures such as the combined uses of industrial, manufacturing, research, properly buffered recreational uses (except where precluded by airport hazard zone regulations), and office complexes (if specifically related to adjoining industrial uses) that constitute a growing part of Florida's economic development sector. <del>New</del> <u>limerock mining and natural-resource-extraction-(mining)-activities-and fill dirt operations must be approved through the <u>Mine Excavation Industrial Planned Development rezoning process</u>. Retail or wholesale of products manufactured or processed upon the premises may be allowed at a ratio of 1 square foot of commercial uses to 10 square feet of industrial use in association with a Planned Development. Ancillary minor retail commercial uses intended to support the surrounding industrial land uses may not exceed 30,000 square feet per development; and, at buildout, may not exceed more than ten percent (10%) of the total acreage of the lands designated as Industrial Development areas in each community outlined in Map 16. Residential uses, other than bona fide caretaker residences, are not permitted in this category except to the extent provided in Chapter XIII of the Plan.</u></p>
<p><b>Staff Rational:</b> Mining is already an allowable use in the Industrial Development Future Land Use Category and staff recommends the use remain.</p>	

Original Dover Kohl proposal:	Staff report proposal:
<p><b>POLICY 1.2.2:</b> The <u>Tradeport</u> areas are commercial and industrial lands adjacent to the airport needed to accommodate projected growth through the year 2020. These areas will include developments consisting of light manufacturing or assembly, warehousing, and distribution facilities; offices; research and development activities; ground transportation and airport-related terminals or transfer facilities; and hotels/motels, meeting facilities; and retail uses within hotels/motels. Ancillary retail commercial uses, intended to support the surrounding business and industrial land uses, are allowed if they are part of a Planned Development of 10 or more acres in size and are limited to 1,000 square feet per acre of Tradeport land within the Planned Development. Residential uses, other than bona fide caretaker residences, are not permitted in this category except to the extent provided in Chapter XIII of the Plan. Caretaker residences are not permitted in the Airport Noise Zone B.</p> <p><u>Limerock mining may be approved through the planned development rezoning process for land designated Tradeport on the Future Limerock Mining map (Map 14).</u> Because this area is located within the Six Mile Cypress Basin and is also a primary point of entry into Lee County, special environmental and design review guidelines will be applied to its development to maintain the appearance of this area as a primary point of entry into Lee County. Property in Section 1 and the east ½ of Section 2, Township 46 South, Range 25 East, and in Section 6, Township 46 South, Range 26 East, must be rezoned to a planned development zoning category prior to any development other than the construction of essential public services. During the rezoning process, the best environmental management practices identified on pages 43 and 44 of the July 28, 1993 Henigar &amp; Ray study entitled, “Groundwater Resource Protection Study” will be rebuttably presumed to be necessary to protect potential groundwater resources in the area.</p>	<p><b>POLICY 1.2.2:</b> The <u>Tradeport</u> areas are commercial and industrial lands adjacent to the airport needed to accommodate projected growth through the year 2020. These areas will include developments consisting of light manufacturing or assembly, warehousing, and distribution facilities; offices; research and development activities; ground transportation and airport-related terminals or transfer facilities; and hotels/motels, meeting facilities; and retail uses within hotels/motels. Ancillary retail commercial uses, intended to support the surrounding business and industrial land uses, are allowed if they are part of a Planned Development of 10 or more acres in size and are limited to 1,000 square feet per acre of Tradeport land within the Planned Development. Residential uses, other than bona fide caretaker residences, are not permitted in this category except to the extent provided in Chapter XIII of the Plan. Caretaker residences are not permitted in the Airport Noise Zone B.</p> <p><i>[staff recommends against adding this additional sentence]</i></p> <p>Because this area is located within the Six Mile Cypress Basin and is also a primary point of entry into Lee County, special environmental and design review guidelines will be applied to its development to maintain the appearance of this area as a primary point of entry into Lee County. Property in Section 1 and the east ½ of Section 2, Township 46 South, Range 25 East, and in Section 6, Township 46 South, Range 26 East, must be rezoned to a planned development zoning category prior to any development other than the construction of essential public services. During the rezoning process, the best environmental management practices identified on pages 43 and 44 of the July 28, 1993 Henigar &amp; Ray study entitled, “Groundwater Resource Protection Study” will be rebuttably presumed to be necessary to protect potential groundwater resources in the area.</p>
<p><b>Additional Staff Recommendation:</b> If the additional sentence proposed by Dover-Kohl is accepted, the phrase “planned development rezoning process” should be replaced with current terminology, which would read “Mine Excavation Planned Development rezoning process.” Dover-Kohl concurs with this change.</p>	
<p><b>Staff Update:</b> Under section(m) you will see a discussion about a property owner in the Tradeport category who may be desirous of mining their property. That tract is bounded on the west by Airport Haul Road and on the east by Area C, which contains an active limerock mine that is currently in the rezoning process to expand its pits to the westerly edge of Area C. Staff sees this proposal as a compromise on this issue and no longer objects to the inclusion of this portion of the Tradeport being included in the Future Limerock Mining overlay on Map 14. If the LPA agrees, the Dover Kohl language should be recommended for transmittal. Dover-Kohl concurs with this modification.</p>	

**POLICY 1.4.1:** The Rural areas are to remain predominantly rural--that is, low density residential, agricultural uses, and minimal non-residential land uses that are needed to serve the rural community. Natural resource extraction may be permitted in accordance with Policy 10.1.4. These areas are not to be programmed to receive urban-type capital improvements, and they can anticipate a continued level of public services below that of the urban areas. Maximum density in the Rural area is one dwelling unit per acre (1 du/acre).

Original Dover-Kohl proposal:	Staff report proposal:
<p><b>POLICY 1.4.5:</b> The <u>Density Reduction/Groundwater Resource (DR/GR)</u> areas include upland areas that provide substantial recharge to aquifers most suitable for future wellfield development. These areas also are the most favorable locations for physical withdrawal of water from those aquifers. Only minimal public facilities exist or are programmed.</p> <ol style="list-style-type: none"> <li>1. Land uses in these areas must be compatible with maintaining surface and groundwater levels at their historic levels <u>(except as provided in Policies 30.1.3 and 30.3.3)</u>. <u>Historic wet-season water depths and hydroperiods are depicted on Map 24, based on detailed analyses of 1953 aerial photography. Additional evidence as to historic levels may be submitted during the rezoning or development review processes.</u></li> <li>2. Permitted land uses include agriculture, natural resource extraction and related facilities, conservation uses, <del>publicly-owned gun range facilities;</del> <u>and</u> private recreation facilities, and residential uses at a maximum density of one dwelling unit per ten acres (1 du/10 acres). <u>See density Table I(a) regarding potential incentives for off-site transfers of development rights.</u> <ol style="list-style-type: none"> <li>a. <u>For residential development, also see Objective 30.3 and following policies. Commercial and civic uses can be incorporated into Rural and Mixed-Use Communities to the extent specifically provided.</u></li> <li>b. Individual residential parcels may contain up to two acres of Wetlands without losing the right to have a dwelling unit, provided that no alterations are made to those wetland areas.</li> <li>c. <u>Residential uses, other than a single bonafide caretaker's residence or a resident manager's unit, are not permitted in conjunction with private recreational uses or mining activities. Residential density associated with land zoned as Private Recreational Facility will be extinguished and cannot be transferred, clustered, or otherwise assigned to any property in accordance with Policy 16.2.3. Residential density of mined land will be extinguished unless it is transferred to an eligible property in accordance with Policy 30.3.3.</u></li> <li>d. <u>The Future Limerock Mining overlay (Map 14) identifies sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through the Lee Plan's planning horizon of 2030. See Objective 30.1 and following policies.</u></li> </ol> </li> <li>3. Private Recreational Facilities may be permitted in accordance with the site locational requirements and design standards, as further defined in Goal 16. No Private recreational facilities may occur within the DR/GR land use category without a rezoning to an appropriate planned development zoning category, and compliance with the Private Recreation Facilities performance standards, contained in Goal 16 of the Lee Plan.</li> </ol>	<p><b>POLICY 1.4.5:</b> The <u>Density Reduction/Groundwater Resource (DR/GR)</u> areas include upland areas that provide substantial recharge to aquifers most suitable for future wellfield development. These areas also are the most favorable locations for physical withdrawal of water from those aquifers. Only minimal public facilities exist or are programmed.</p> <ol style="list-style-type: none"> <li>1. Land uses in these areas must be compatible with maintaining surface and groundwater levels at their historic levels <u>(except as provided in Policies 30.1.3 and 30.3.3)</u>. <u>Historic wet-season water depths and hydroperiods are depicted on Map 24, based on detailed analyses of 1953 aerial photography. Additional evidence as to historic levels may be submitted during the rezoning or development review processes.</u></li> <li>2. Permitted land uses include agriculture, natural resource extraction and related facilities, conservation uses, <del>publicly-owned gun range facilities;</del> <u>and</u> private recreation facilities, and residential uses at a maximum density of one dwelling unit per ten acres (1 du/10 acres). <u>See density Table I(a) regarding potential incentives for off-site transfers of development rights.</u> <ol style="list-style-type: none"> <li>a. <u>For residential development, also see Objective 30.3 and following policies. Commercial and civic uses can be incorporated into Rural and Mixed-Use Communities to the extent specifically provided.</u></li> <li>b. Individual residential parcels may contain up to two acres of Wetlands without losing the right to have a dwelling unit, provided that no alterations are made to those wetland areas.</li> <li>c. <i>[staff recommends against adding subparagraph 2.c]</i></li> </ol> </li> <li>3. <u>Private Recreational Facilities may be permitted in accordance with the site locational requirements and design standards, as further defined in Goal 16. No Private recreational facilities may occur within the DR/GR land use category without a rezoning to an appropriate planned development zoning category, and compliance with the Private Recreation Facilities performance standards, contained in Goal 16 of the Lee Plan.</u> <ol style="list-style-type: none"> <li>c. <del>†</del> <u>The Future Limerock Mining overlay (Map 14) identifies sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through the Lee Plan's planning horizon of 2030. See Objective 30.1 and following policies.</u></li> </ol> </li> </ol>
<p><b>Additional Staff Recommendation:</b> To clarify the meaning of Policy 1.4.5, subparagraph 1 should be revised to begin as follows: "New land uses in these areas that require a local development order must be compatible..." Dover-Kohl concurs with this change.</p>	

**POLICY 1.7.6:** The Planning Communities Map and Acreage Allocation Table (see Map 16 and Table 1(b) and Policies 1.1.1 and 2.2.2) depicts the proposed distribution, extent, and location of generalized land uses for the year 2030. Acreage totals are provided for land in each Planning Community in unincorporated Lee County. No ~~final~~ development orders or extensions to ~~final~~ development orders will be issued or approved by Lee County which would allow the acreage totals for residential, commercial or industrial uses contained in Table 1(b) to be exceeded. This policy will be implemented as follows:

1. For each Planning Community the County will maintain a parcel based database of existing land use. The database will be periodically updated at least twice every year, in September and March, for each Planning Community.
2. Project reviews for development orders must include a review of the capacity, in acres, that will be consumed by buildout of the development order. No development order, or extension of a development order, will be issued or approved if the project acreage, when added to the acreage contained in the updated existing land use database, exceeds the limitation established by Table 1(b), Acreage Allocation Table regardless of other project approvals in that Planning Community. For limerock mining in Planning Community #18, see special requirements in Policy 30.1.4 regarding industrial acreages in Table 1(b).
3. ~~No later than the~~ At each regularly-scheduled date for submission of the Lee Plan Evaluation and Appraisal Report, and every five years thereafter, the County must conduct a comprehensive evaluation of Planning Community Map and the Acreage Allocation Table system, including but not limited to, the appropriateness of land use distribution, problems with administrative implementations, if any, and areas where the Planning Community Map and the Acreage Allocation Table system might be improved.

**POLICY 1.7.12:** The Future Limerock Mining overlay (Map 14) identifies sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through the Lee Plan's planning horizon of 2030. See Objective 30.1 and following policies.

Original Dover-Kohl proposal:	Staff report proposal:
<p><b>POLICY 1.7.13:</b> The <u>Rural Residential overlay (Map 17) is described in Policies 30.3.1 and 30.3.2. This overlay affects only Southeast Lee County and identifies three types of land:</u></p> <ol style="list-style-type: none"> <li>1. <u>“Existing Acreage Subdivisions”: existing residential subdivisions that are reasonably distant from adverse external impacts such as natural resource extraction.</u></li> <li>2. <u>“Rural Communities” and “Mixed-Use Communities”:</u> <u>locations for the concentration of development rights from large contiguous tracts in the Density Reduction/Groundwater Resource area. See Objective 30.3 and following policies.</u></li> <li>3. <u>“Mixed-Use Communities”:</u> <u>locations where this concentration of development rights may be supplemented by transfer of development rights from non-contiguous tracts in the Density Reduction/Groundwater Resource area. See Objective 30.3 and following policies.</u></li> </ol>	<p><b>POLICY 1.7.13:</b> The <u>Rural Residential overlay (Map 17) is described in Policies 30.3.1 and 30.3.2. This overlay affects only Southeast Lee County and identifies three types of land:</u></p> <ol style="list-style-type: none"> <li>1. <u>“Existing Acreage Subdivisions”: existing rural residential subdivisions that should be protected from adverse external impacts such as natural resource extraction.</u></li> <li>2. <u>“Rural Communities” and “Mixed-Use Communities”:</u> <u>locations for the concentration of development rights from large contiguous tracts in the Density Reduction/Groundwater Resource area. See Objective 30.3 and following policies.</u></li> <li>3. <u>“Mixed-Use Communities”:</u> <u>locations where this concentration of development rights may be supplemented by transfer of development rights from non-contiguous tracts in the Density Reduction/Groundwater Resource area. See Objective 30.3 and following policies.</u></li> </ol>
<p><b>Update:</b> Dover-Kohl concurs with the revised language for this policy as proposed in the staff report.</p>	

**POLICY 1.7.14:** The Historic Surface and Groundwater Levels overlay (Map 24) depicts historic wet-season water depths and hydroperiods for Southeast Lee County. This depiction is based on detailed analyses of 1953 aerial photography as described in the 2008 report, *Ecological Memorandum of the Density Reduction/Groundwater Resource Area*, by Kevin L. Erwin Consulting Ecologist, Inc. For purposes of determining compliance with Policy 1.4.5, additional evidence as to historic levels may be submitted during the rezoning or development review processes.

~~**POLICY 1.7.15:** The Priority Restoration overlay (Map 25) depicts land in Planning Community #18 (Southeast Lee County) that had not been formally targeted for public acquisition but where acquisition and/or restoration would be highly desirable to restore water levels and/or to connect existing corridors or conservation areas (see Objective 30.2 and following policies).~~

**Additional Staff Recommendation:** To carry out the staff recommendation in section (q) below, proposed Policy 1.7.15 is no longer needed. Dover-Kohl concurs with the elimination of Policy 1.7.15.

Original Dover-Kohl proposal:	Staff report proposal:
<p><b>POLICY 2.2.2:</b> Map 1 of the Future Land Use Map series indicates the uses and density ranges that will ultimately be permitted on a given parcel. However, it is not a guarantee that such densities or uses are immediately appropriate, as the map provides for the county’s growth <u>beyond the Lee Plan's planning horizon of 2030, over the coming 26 years.</u> During the rezoning process the Board of County Commissioners will balance the overall standards and policies of this plan with three additional factors:</p> <ol style="list-style-type: none"> <li>1. Whether a given proposal would further burden already overwhelmed existing and committed public facilities such that the approval should be delayed until the facilities can be constructed; and</li> <li>2. Whether a given proposal is for land so far beyond existing development or adequate public facilities that approval should be delayed in an effort to encourage compact and efficient growth patterns; and</li> <li>3. Whether a given proposal would result in unreasonable development expectations which may not be achievable because of acreage limitations contained in the Acreage Allocation Table (see Policy 1.7.6, Map 16 and Table 1(b)). <u>An exception to this policy for mining is provided in Policy 30.1.4.</u></li> </ol> <p>In all cases where rezoning is approved, such approval does not constitute a determination that the minimum acceptable levels of service (see Policy 95.1.3) will be available concurrent with the impacts of the proposed development. Such a determination must be made prior to the issuance of additional development permits, based on conditions which exist at that time, as required by Lee County’s concurrency management system.</p>	<p><b>POLICY 2.2.2:</b> Map 1 of the Future Land Use Map series indicates the uses and density ranges that will ultimately be permitted on a given parcel. However, it is not a guarantee that such densities or uses are immediately appropriate, as the map provides for the county’s growth <u>beyond the Lee Plan's planning horizon of 2030, over the coming 26 years.</u> During the rezoning process the Board of County Commissioners will balance the overall standards and policies of this plan with three additional factors:</p> <ol style="list-style-type: none"> <li>1. Whether a given proposal would further burden already overwhelmed existing and committed public facilities such that the approval should be delayed until the facilities can be constructed; and</li> <li>2. Whether a given proposal is for land so far beyond existing development or adequate public facilities that approval should be delayed in an effort to encourage compact and efficient growth patterns; and</li> <li>3. Whether a given proposal would result in unreasonable development expectations which may not be achievable because of acreage limitations contained in the Acreage Allocation Table (see Policy 1.7.6, Map 16 and Table 1(b)). <u>Additional provisions related to mining are provided in Policy 30.1.4.</u></li> </ol> <p>In all cases where rezoning is approved, such approval does not constitute a determination that the minimum acceptable levels of service (see Policy 95.1.3) will be available concurrent with the impacts of the proposed development. Such a determination must be made prior to the issuance of additional development permits, based on conditions which exist at that time, as required by Lee County’s concurrency management system.</p>

**Update:** Dover-Kohl concurs with the revised language for this policy as proposed in the staff report.



**POLICY 6.1.2:** All commercial development must be consistent with the location criteria in this policy, except where specifically excepted by this policy or by Policy 6.1.7, or in Lehigh Acres by Policies 1.8.1 through 1.8.3.

1. Minor Commercial *[no changes]*
2. Neighborhood Commercial *[no changes]*
3. Community Commercial *[no changes]*
4. Regional Commercial *[no changes]*
5. Commercial development “at the intersection”... *[no changes]*
6. Any contiguous property... *[no changes]*
7. The location standards specified in... *[no changes]*
8. The standards specified in... *[no changes]*
9. The location standards in this policy are not applicable in the following areas:
  - a. In the Interchange land use category, or in
  - b. In Lehigh Acres where commercial uses are permitted in accordance with Policies 1.8.1 through 1.8.3, or within
  - c. Within the Captiva community in the areas identified by Policy 13.2.1:
  - d. In the Density Reduction / Groundwater Resource area where some commercial development is permitted by policies under Objective 30.3.
10. The Board of County Commissioners... *[no changes]*
11. Uses that must comply... *[no changes]*
12. Map 19 illustrates... *[no changes]*
13. Freestanding single use... *[no changes]*

**POLICY 9.1.2:** Encourage the utilization of energy, water, and soil conservation management practices in agricultural activities.

**POLICY 9.1.4:** Protect agricultural activities on lands designated as Agricultural on the agricultural overlay (see Map 20) from the impacts of new natural resource extraction operations, recreational uses, and residential developments. However, in Future Limerock Mining areas (see Map 14), agricultural activities may be limited to the interim period prior to mining or may need to coexist with adjoining mining activities and mining pits.

**POLICY 9.1.6:** Lee County will work with an private agricultural advisory committee, agricultural operators, and landowners to establish incentives to encourage the continuation of existing agricultural operations and improvements to existing agricultural operations as needed to store and treat water and improve ecological values. The county, with the assistance of the committee, will investigate the feasibility of a Transfer Purchase of Development Rights (TDR) bank (PDR) program for agricultural property by ~~1995~~ 2012 (see Policy 30.3.5).

**POLICY 9.1.7:** Existing agricultural lands within the DR/GR land use category provide important surface and subsurface connections for water and wildlife resources. The county supports the integration of agriculture within a comprehensive and coordinated effort of county and regional agencies to manage the water resources in a manner that includes the protection and restoration of natural systems within southeast Lee County.

**GOAL 10: NATURAL RESOURCE EXTRACTION.** To protect areas containing commercially valuable identified natural resources from incompatible urban development, while insuring that natural resource extraction operations minimize or eliminate adverse effects on surrounding land uses and on other natural resources.

**OBJECTIVE 10.1:** Designate through the rezoning process sufficient lands suitable for providing fill material, limerock, and other commercially valuable natural resources ~~extraction materials~~ to meet the county's needs and to export to other communities, while providing adequate protection for the county's other natural resources.

*[Previous Policies 10.1.1 and 10.1.2 have been relocated to 10.2.1 and 10.2.2.]*

**POLICY 10.1.1:** The sale of overburden from approved limerock mines is encouraged because converting overburden into fill material avoids additional mining at other locations. However, shallow mines that produce primarily fill dirt should be sited as close as possible to locations of high demand to minimize the distance that fill material must be trucked to likely destinations (see also Policy 30.1.5).

**POLICY 10.1.2:** The future uses of any new or renewed natural resource extraction operation must be evaluated at the time the property undergoes planned development zoning review. Site plans should be designed to incorporate proposed future uses including open space and to ensure the protection of surface and ground water resources, wildlife, and native plant communities.

**POLICY 10.1.3:** Reclamation is intended to replace or offset ecological benefits lost during extraction, including the creation of conditions that will support a healthy water body to the extent practicable. Applications for natural resource extraction permits for new or expanding sites, or for future use of such sites, must include a reclamation plan which provides assurance of implementation. This plan must address the reclamation and sustainable management of all existing and future mining pits, preserves, and buffer areas that are or may in the future be related to the mining operation. Reclamation plans in Future Limerock Mining areas (see Map 14) should include littoral shelves suitable for native wetland plants, revegetation of disturbed land, allowance for wildlife movement, and minimization of long-term effects on surrounding surface and groundwater levels. Reclamation plans for mines providing primarily fill material should provide more extensive littoral shelves and should describe how shorelines will be configured and managed and how disturbed uplands will be restored or converted to other acceptable land uses. Reclamation plans in or near important groundwater resource areas must also be designed to minimize the possibility of contamination of the groundwater during mining and after completion of the reclamation.

**POLICY 10.1.4:** Limerock mining may be permitted only in accordance with Objective 30.1 and its policies. Other natural resource extraction activities such as fill dirt operations (and ancillary industrial uses which are ancillary to natural resource extraction) may be permitted as follows:

1. In areas indicated on the Future Land Use Map as Rural, Open Lands, and Density Reduction/Groundwater Resources, provided they have adequate fire protection, transportation facilities, wastewater treatment and water supply, and provided further that they have no significant adverse effects such as dust and noise on surrounding land uses and natural resources. In the Density Reduction/Groundwater Resource area, fill dirt operations are further restricted in accordance with Policy 30.1.5.
2. In order to reduce transport costs and minimize wear on the county's roadways, the extraction and transport of fill material may also be permitted as an interim use in the Future Urban Areas provided that the above requirements are met; however, special restrictions may also be applied to protect other land uses. These determinations will be made during the rezoning process. Ancillary crushing of limerock strata embedded within fill material may be permitted for use on-site.

**POLICY 10.1.5:** Lee County will support efforts by government, community leaders, and the extractive industry owners and businesses to seek incentives that will help to facilitate the connection of natural resource extraction borrow lake excavations incorporate reclaimed mining pits into a comprehensive and coordinated effort of county and regional agencies to system of interconnected lakes and flowways that will enhance wildlife habitat values, minimize or repair the long-term impacts to adjoining natural systems, provide for human recreation, educational, and other appropriate uses, and/or strengthen community environmental benefits.

**OBJECTIVE 10.2:** Coordinate mining activities, including evaluation, monitoring, reclamation, and redevelopment, with water supply planning, surface water management activities, wetland protection, wildlife conservation, and future residential activities. Consider the cumulative and watershed-wide impacts of mining activities, not just the direct impacts of each individual mine in isolation.

**POLICY 10.2.1:** *[previously Policy 10.1.1]* Natural resource extraction operations intending to withdraw groundwater for any purpose must provide a monitoring system to measure surface and groundwater impacts: levels and quality to assess any degradation of groundwater resources. Particular attention will be given to potential travel time to wellfields and residential wells. Mining applications are strongly encouraged to include a minimum of three years baseline monitoring and assessments of the likely change in flow, timing of travel, and direction of surface and groundwater systems on-site and in the impacted area.

**POLICY 10.2.2:** *[previously Policy 10.1.2]* Applications for natural resource extraction permits for new or expanding areas must include an environmental assessment. The assessment will include (but not be limited to) consideration of air emissions, impact on environmental and natural resources, effect on nearby land uses, degradation of water quality, depletion of water quantity, drainage, fire and safety, noise, odor, visual impacts, transportation including access roads, sewage disposal, and solid waste disposal. Assessments will also include:

1. Potential impacts on the aquatic ecology and water quality of mining pits that will result from mining pit design.
2. Likely post-mining impacts such as runoff or groundwater flow on land uses surrounding the site.
3. Consideration of the primary and secondary impacts at the local and watershed levels.

**POLICY 10.2.3:** The depth of mining for a proposed excavation will be limited as necessary to prevent any breach of an aquaclude or confining layer.

**POLICY 10.2.4:** Other limitations on mining pit size, setbacks, and depths will be determined on a case-by-case basis depending on existing neighboring uses, specific hydrogeologic conditions, wetlands and watershed protection, wildlife conservation, and transportation routes including anticipated traffic to and from the mine.

**POLICY 10.2.5:** Areas that are designated as preserve areas (e.g., buffers, indigenous preservation, and reclaimed littoral shelves) during the mining rezoning process must be protected by the execution of perpetual conservation easements so that these areas will be maintained during mine operation and in perpetuity regardless of future land uses. A timetable for all environmental remediation including the construction of buffers and reclamation of littoral shelves must be included as part of the mining rezoning application. Lee County must be named in the easement as a back-up grantee that is empowered, but not obligated, to enforce the terms of the easement. If no entity suitable to Lee County will agree to serve as primary grantee, Lee County will accept the easement.

**POLICY 10.2.6:** The Land Development Code will establish the contents and frequency of monitoring reports from authorized mines. These reports may include surface and groundwater monitoring of water quality and quantity, the areas under active mining, the depths being mined, the quantity and type of mined materials, estimated reserves left for mining, and the annual volume, direction, and destination of the material being transported. Reporting will include the active mining and processing area; the areas where reclamation has been completed; and the areas where invasive exotic removal is underway or completed.

**POLICY 10.2.7:** Zoning or development order approvals may require that significant adverse impacts identified during mining or post-mining will be subject to adaptive resource management whereby corrective measures can be guaranteed through conditions on the next phase's approval.

**OBJECTIVE 10.3: ~~10.2:~~** Determine and maintain a balance between the County's petroleum resources and the health, safety and welfare of the residents of its Future Urban Areas.

**GOAL 30: SOUTHEAST LEE COUNTY.** To protect natural resources in accordance with the County’s 1990 designation of Southeast Lee County as a groundwater resource area, augmented through a comprehensive planning process that culminated in the 2008 report, *Prospects for Southeast Lee County*. To achieve this goal, it is necessary to address the inherent conflict between retaining shallow aquifers for long-term water storage and extracting the aquifer’s limestone for processing into construction aggregate. The best overall balance between these demands will be achieved through a pair of complementary strategies: consolidating future mining in the traditional Alico Road industrial corridor while initiating a long-term restoration program to the east and south to benefit water resources and protect natural habitat. Residential and commercial development will not be significantly increased except where development rights are being explicitly concentrated by this plan. Most agriculture can continue, and environmental restoration can begin. This goal and subsequent objectives and policies apply to Southeast Lee County as depicted on Map 16.

**OBJECTIVE 30.1: LIMEROCK MINING.** Designate on a Future Land Use Map overlay sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through this plan’s horizon of 2030.

**POLICY 30.1.1:** Limerock mining is a high-disturbance activity whose effects on the surrounding area cannot be completely mitigated. To minimize the impacts of mining on valuable water resources, natural systems, residential areas, and the road system, Map 14 identifies Future Limerock Mining areas that will concentrate limerock mining activity in the traditional Alico Road industrial corridor east of I-75. By formally identifying such areas in this plan and allowing rezonings for new and expanded limerock mines only in the areas identified in Map 14, limerock resources in or near existing disturbed areas will be more fully utilized and the spread of limerock mining impacts into less disturbed environments will be precluded until such time as there is a clear necessity to do so (and Map 14 is amended accordingly). Inclusion of land on Map 14 does not restrict the rights of landowners to use their land for other allowable purposes.

**POLICY 30.1.2:** Most land identified on Map 14 is in the Density Reduction / Groundwater Resource area (see Policy 1.4.5) and will also be subject to those special requirements. Future Limerock Mining land outside the DR/GR area will also be subject to requirements of the appropriate designation on Map 1. Goal 10 and its objectives and policies contain additional guidance on mining. The Land Development Code will continue to provide additional details on mining approvals and operations.

Original Dover-Kohl proposal:	Staff report proposal:
<p><b>POLICY 30.1.3:</b> Concurrent with the update of Map 14 in 2009, the Lee Plan was amended to improve the ability to efficiently mine in Future Limerock Mining areas. An exception was made to the requirement in Policy 1.4.5 that all DR/GR land uses must be compatible with maintaining surface and groundwater levels at their historic levels. Under this exception, land in Future Limerock Mining areas may be rezoned for mining when the impacts to natural resources including water levels and wetlands are offset through appropriate mitigation within Southeast Lee County. <b>The Land Development Code will be amended and maintained to include provisions for assessing and mitigating mining impacts and for transferring or extinguishing residential development rights on land zoned for limerock mining pits.</b></p>	<p><b>POLICY 30.1.3:</b> Concurrent with the update of Map 14 in 2009, the Lee Plan was amended to improve the ability to efficiently mine in Future Limerock Mining areas. An exception was made to the requirement in Policy 1.4.5 that all DR/GR land uses must be compatible with maintaining surface and groundwater levels at their historic levels. Under this exception, land in Future Limerock Mining areas may be rezoned for mining when the impacts to natural resources including water levels and wetlands are offset through appropriate mitigation within Southeast Lee County. <b>The Land Development Code will be amended and maintained to include provisions for assessing and mitigating mining impacts and for transferring residential development rights on land zoned for limerock mining pits.</b></p>
<p><b>Staff Recommendation:</b> To be consistent with staff’s recommendation for Policy 1.4.5.2.c, staff recommends not extinguishing the residential density.</p>	

**POLICY 30.1.4:** Table 1(b) contains industrial acreage in Southeast Lee County that reflects the acreage of limerock mining pits needed to meet local and regional demand through the year 2030. The parcel-based database of existing land uses that is described in Policy 1.7.6 will be updated at least every seven years to reflect additional data about limerock mining in Southeast Lee County, including mining acreage zoned (project acres and mining pit acreage), pit acreage with active mine operation permits, acreage actually mined, and acreage remaining to be mined. Current totals are based on data compiled in *Prospects for Southeast Lee County* for the year 2006. Future amendments will reflect any additional data that becomes available through routine monitoring reports and bathymetric surveys or other credible sources. The industrial acreage totals for Southeast Lee County that are found in Table 1(b) for Planning Community #18 will be used for the following purposes:

1. In accordance with Policies 1.1.1 and 1.7.6, new mine development orders and mine development order amendments may be issued provided that the industrial acreage totals in Table 1(b) are not exceeded. For purposes of this computation, the proposed additional limerock pit acreage, when added to the acreage of limerock pits already dug, cannot exceed the acreage limitation established in Table 1(b) for Planning Community #18.
2. Notwithstanding the limitations in Policy 2.2.2(3), the lack of available industrial acreage as provided in Table 1(b) will not preclude rezoning approvals to support new or expanded mines within the Future Limerock Mining areas (Map 14).
3. By monitoring the remaining acreage of land rezoned for mining but not yet mined, Lee County will have critical information to use in determining whether and to what extent the Future Limerock Mining areas in Map 14 may need to be expanded in the future to meet local and regional demands.

**POLICY 30.1.5:** The sale of overburden from approved limerock mines is encouraged because converting overburden into fill material avoids additional mining at other locations. However, shallow mines that produce primarily fill dirt should be sited as close as possible to locations of high demand to minimize the distance that fill material must be trucked to likely destinations (see also Policy 10.1.1). In Southeast Lee County shallow mines are generally unnecessary because fill dirt is available as a byproduct of limerock mines; however, shallow mines may be permitted on sites immediately adjoining areas of high demand for fill dirt such as Lehigh Acres.

**POLICY 30.1.6:** Asphalt and concrete can be recycled to produce aggregate that is comparable to the products of limerock mines. Lee County should be a leader in using recycled aggregate in its construction projects and in encouraging privately operated recycling facilities in appropriate locations to minimize the need to mine or import additional aggregate.

**POLICY 30.1.7:** Protect agricultural activities on lands designated as Agricultural on the agricultural overlay (see Map 20) from the impacts of new natural resource extraction operations, recreational uses, and residential developments. However, in Future Limerock Mining areas (see Map 14), agricultural activities may be limited to the interim period prior to mining or may need to coexist with adjoining mining activities and mining pits.

**OBJECTIVE 30.2: WATER, HABITAT, AND OTHER NATURAL RESOURCES.** Designate on a Future Land Use Map overlay the land in Southeast Lee County that is most critical toward restoring historic surface and groundwater levels and for improving the protection of other natural resources such as wetlands and wildlife habitat.

**POLICY 30.2.1:** Large-scale ecosystem integrity in Southeast Lee County should be maintained and restored. ~~Acquisition Protection~~ and/or restoration of land can connect existing corridors and conservation areas. Restoration is also highly desirable when it can be achieved in conjunction with other uses on privately owned land including agriculture.

**POLICY 30.2.2:** The DR/GR Priority Restoration overlay (~~Map 25~~) depicts land where ~~public-acquisition protection~~ and/or restoration would be most critical to restore historic surface and groundwater levels and to connect existing corridors or conservation areas (see Policy 1.7.6 and Map 1, Page 4), ~~1.7.15). Map 25~~ This overlay identifies seven tiers of land potentially eligible for ~~protection and restoration acquisition~~, with Tier 1 and Tier 2 being the highest priority for protection from irreversible land-use changes. Lee County will evaluate this overlay map every 7 years to determine if changes in public ownership, land use, ~~new scientific data~~, and/or demands on water resources justify updating this map.

**POLICY 30.2.3:** It is in southwest Florida's interest for public ~~and or~~ nonprofit agencies to actively pursue acquisition of partial or full interest in land within the Tier 1 ~~potential-acquisition areas in this overlay~~ through direct purchase; partnerships with other government agencies; long-term purchase agreements; right of first refusal contracts; land swaps; and other appropriate means. These lands would provide critical connections to other ~~conservation publicly-owned~~ lands that serve as the backbone for water resource management and wildlife movement within the DR/GR. Tier 2 lands are of equal ecological and water resource importance as Tier 1 but have better potential to remain in productive agricultural use as described in Policies 30.2.5 and 30.2.6.

1. The county will consider incentives for private landowners to maintain and improve water resources and natural ecosystems on properties within the Tier 2 through Tier 7 ~~potential-acquisition areas on Map 25~~, including but not limited to acquiring agricultural or conservation easements; compensation for water storage that is in the public interest; and providing matching funds to secure federal and state funds/grants for improving agricultural best management practices or protection/restoration of wetlands on existing agricultural operations.
2. Permanent protection of land within all ~~acquisition tiers on Map 25~~ may also occur through:
  - a. Using resource extraction mitigation fees to acquire land;
  - b. Establishing a Regional Offsite Mitigation Area (ROMA); and
  - c. Concentrating of development as depicted in the Rural Residential overlay (Map 17) as detailed in Policies 30.3.2 and 30.3.3.

**POLICY 30.2.4:** Restoration of critical lands in Southeast Lee County is a long-term program that will progress in phases based on available funding, land ownership, and water-resource priority. On individual sites, restoration can be carried out in stages:

1. Initial restoration efforts would include techniques such as filling agricultural ditches and/or establishing control structures to restore the historic water levels as much as possible without adversely impacting nearby properties.
2. Future restoration efforts would include the eradication of invasive exotic vegetation and the reestablishment of appropriate native ecosystems based upon the restored hydrology.

**POLICY 30.2.5:** Lee County recognizes the importance of maintaining agricultural lands within Southeast Lee County for local food production, water conservation and storage, land conservation, wildlife habitat, and wetland restoration. The continued use of ever evolving agricultural best management practices will protect native soils and potentially improve the quantity and quality of water resources, allowing sustainable agriculture to be integrated into restoration planning for southeast Lee County.

**POLICY 30.2.6:** On existing farmland, the county should consider incentives to encourage the continuation of agricultural operations that implement and maintain best management practices. Continued agricultural use may be an acceptable a desirable long-term use even within land designated on the priority restoration overlay Map 25 as potentially eligible for protection acquisition (see Policy 9.1.7).

**POLICY 30.2.7:** Impacts of proposed land disturbances on surface and groundwater resources should be analyzed using integrated surface and groundwater models that utilize site-specific data to assess potential adverse impacts on water resources and natural systems within southeast Lee County.

**Additional Staff Recommendation:** In response to public input and to incorporate changes resulting from the staff recommendation in section (q) below, numerous changes to Policies 30.2.1 through 30.2.6 are shown above in red. Dover-Kohl concurs with these changes.

**OBJECTIVE 30.3: RESIDENTIAL AND MIXED-USE DEVELOPMENT.** Designate on a Future Land Use Map overlay existing rural residential areas that should be protected from adverse impacts of mining and locations for concentrating existing development rights on large tracts.

<b>Original Dover-Kohl proposal:</b>	<b>Staff report proposal:</b>
<u>POLICY 30.3.1: Existing acreage subdivisions that are not in or near Future Limerock Mining areas are shown on Map 17. These subdivisions are reasonably distant from adverse external impacts such as natural resource extraction.</u>	<u>POLICY 30.3.1: Existing acreage subdivisions are shown on Map 17. These subdivisions should be protected from adverse external impacts.</u>
<b>Update:</b> Dover-Kohl concurs with the revised language for this policy as proposed in the staff report.	

POLICY 30.3.2: Unsubdivided land is too valuable to be consumed by inefficient land-use patterns. Although additional acreage or ranchette subdivisions may be needed in the future, the preferred pattern for using existing residential development rights from large tracts is to concentrate them as compact internally connected Rural and Mixed-Use Communities along existing roads away from Future Limerock Mining areas. Map 17 identifies future locations for Rural and Mixed-Use Communities where development rights can be concentrated from major DR/GR tracts. Rural Communities will be predominately residential but are encouraged to incorporate minimal commercial and civic uses that would serve rural residents.

POLICY 30.3.3: Owners of major DR/GR tracts without the ability to provide direct access to SR 82 are encouraged to transfer their residential development rights to future Mixed-Use Communities along SR 82 (see designated areas on Map 17). These transfers would avoid unnecessary travel for future residents, increase housing diversity and commercial opportunities for nearby Lehigh Acres, protect existing agricultural lands, and allow the conservation of larger contiguous tracts of land.

1. To this end Lee County will establish a program that will allow and encourage the transfer of upland and wetland development rights (TDR) from one landowner to another who wishes to develop a Mixed-Use Community or wishes to exercise these development rights outside the DR/GR area. This program will be in addition to the existing wetland TDR program described in Article IV of Chapter 2 of the Land Development Code.
2. In 2009 an exception was made to the requirement in Policy 1.4.5 that all DR/GR land uses must be compatible with maintaining surface and groundwater levels at their historic levels. Under this exception, Mixed-Use Communities may be constructed along SR 82 on land so designated on Map 17 provided the impacts to natural resources including water levels and wetlands are offset through appropriate mitigation within Southeast Lee County.
3. Within the Mixed-Use Communities shown on Map 17, significant commercial and civic uses are encouraged. Specific requirements for incorporating these uses into Mixed-Use Communities will be found in the Land Development Code.

**Additional Staff Recommendation:** If an additional Mixed Use Community is added to Map 17 as proposed by Dover-Kohl in section (n) below, two changes would be needed to Policy 30.3.3:

- The opening sentence would be reworded to read: “Owners of major DR/GR tracts without the ability to provide direct access to SR 82 construct a Mixed-Use Community on their own land are encouraged to transfer their residential development rights to future Mixed-Use Communities along SR82 (see on land so designated areas on Map 17).”
- The second sentence of subparagraph 2 would be reworded to read: “Under this exception, Mixed-Use Communities may be constructed along SR 82 on land so designated on Map 17 provided the impacts to natural resources including water levels and wetlands are offset through appropriate mitigation within Southeast Lee County.”

Dover-Kohl concurs with these changes.

POLICY 30.3.4: The Land Development Code will be amended within one year to specify procedures for concentrating existing development rights on large tracts, for transferring development rights between landowners, for seeking approval of additional acreage subdivisions, and for incorporating commercial and civic uses into Rural and Mixed-Use Communities as designated on Map 17.

POLICY 30.3.5: By 2012 Lee County intends to establish and fund a DR/GR TDR bank which will offer to purchase development rights for resale in the TDR system. The purpose of this program is to give potential sellers the opportunity to sell rights even if no developer is ready to use them and to give potential development applicants the opportunity to obtain the necessary rights without seeking them on the open market.

**(c) Amend the Groundwater Recharge sub-element of the Community Facilities and Services Element to modify Policy 63.1.2 on development applications near wellfields**

POLICY 63.1.3: The staff hydrogeologist will review and comment on all development applications proposed in the DR/GR area.

**(d) Amend the Conservation and Coastal Management Element to modify policies under Objective 114.1 on protection of wetlands**

**POLICY 114.1.1:** Development in wetlands is limited to very low density residential uses and uses of a recreational, open space, or conservation nature that are compatible with wetland functions. The maximum density in the Wetlands category is one unit per 20 acres, except that one single family residence will be permitted on lots meeting the standards in Chapter XIII of this plan, and except that owners of wetlands adjacent to Intensive Development, Central Urban, Urban Community, Suburban, and Outlying Suburban areas may transfer densities to developable contiguous uplands under common ownership in accordance with Footnotes 9b and 9c of Table 1(a), Summary of Residential Densities. In Future Limerock Mining areas only (see Map 14), impacts to wetlands resulting from mining will be allowed by Lee County when those impacts are offset through appropriate mitigation within Southeast Lee County (see also Policy 30.1.3).

Original Dover-Kohl proposal:	Staff report proposal:
<p><b>POLICY 114.1.2:</b> The county’s wetlands protection regulations will be consistent with the following:</p> <p><del>1. In accordance with F.S. 163.3184(6)(c), the county will not undertake an independent review of the impacts to wetlands resulting from development in wetlands that is specifically authorized by a DEP or SFWMD dredge and fill permit or exemption.</del></p> <p><u>1.</u> <del>2.</del> No development in wetlands regulated by the State of Florida will be permitted by Lee County without the appropriate state agency permit or authorization.</p> <p><u>2.</u> <del>3.</del> Lee County will incorporate the terms and conditions of state permits into county permits and will prosecute violations of state regulations and permit conditions through its code enforcement procedures.</p> <p><u>3.</u> <del>4.</del> Every reasonable effort will be required to avoid or minimize adverse impacts on wetlands through the clustering of development and other site planning techniques. On- or off-site mitigation will only be permitted in accordance with applicable state standards.</p> <p><u>4.</u> <del>5.</del> Mitigation banks and the issuance and use of mitigation bank credits will be permitted to the extent authorized by applicable state agencies.</p>	<p><b>POLICY 114.1.2:</b> The county’s wetlands protection regulations will be consistent with the following:</p> <p>1. <del>In accordance with F.S. 163.3184(6)(c);</del> The county will not undertake an independent review of the impacts to wetlands resulting from development in wetlands that is specifically authorized by a DEP or SFWMD dredge and fill permit or exemption.</p> <p>2. No development in wetlands regulated by the State of Florida will be permitted by Lee County without the appropriate state agency permit or authorization.</p> <p>3. Lee County will incorporate the terms and conditions of state permits into county permits and will prosecute violations of state regulations and permit conditions through its code enforcement procedures.</p> <p>4. Every reasonable effort will be required to avoid or minimize adverse impacts on wetlands through the clustering of development and other site planning techniques. On- or off-site mitigation will only be permitted in accordance with applicable state standards.</p> <p>5. Mitigation banks and the issuance and use of mitigation bank credits will be permitted to the extent authorized by applicable state agencies.</p>
<p><b>Staff Rational:</b> Staff concurs with the removal of the citation, but recommends leaving the rest of the paragraph in the policy and leaving the existing numbering alone.</p>	



## **Amend the Glossary to add definitions of aggregate, limerock, and public recreation facilities**

AGGREGATE - Aggregate is an industry term for rock particles that vary in size from sand to several inches in diameter. The term "crushed stone" is often used interchangeably. In construction applications, aggregates are mixed with Portland cement or asphalt materials to form Portland cement concrete or hot mix asphalt.

LIMEROCK - Limerock is a common name for construction products made from naturally occurring limestone. In Lee County, most of the commercially valuable limestone comes from the Ochopee geological unit. Limerock mines typically produce rip-rap and the base rock that is used for road beds, as well as selling overburden as fill dirt. Larger limerock mines also produce aggregate (crushed stone) of various sizes.

PUBLIC RECREATION FACILITIES - Land and appurtenant facilities that are provided by a governmental agency or charitable conservation organization for recreational use by the general public.

**(f) Add a footnote to Table 1(a) of the Future Land Use Map Series (summary of residential densities) to authorize potential density bonuses for transferring development rights from Southeast Lee County to “Mixed-Use Communities” or to land designated on the “Mixed Use” overlay**

TABLE 1(a)  
SUMMARY OF RESIDENTIAL DENSITIES <sup>1</sup>

FUTURE LAND USE CATEGORY	STANDARD OR BASE DENSITY RANGE		BONUS DENSITY
	MINIMUM <sup>2</sup> (Dwelling Units per Gross Acre)	MAXIMUM (Dwelling Units per Gross Acre)	MAXIMUM TOTAL DENSITY <sup>3</sup> (Dwelling Units per Gross Acre)
Intensive Development	8	14	22
Central Urban	4	10	15
Urban Community <sup>4,5</sup>	1	6	10
Suburban	1	6	No Bonus
Outlying Suburban	1	3	No Bonus
Sub-Outlying Suburban	1	2	No Bonus
Rural <sup>10</sup>	No Minimum	1	No Bonus
Outer Islands	No Minimum	1	No Bonus
Rural Community Preserve <sup>6</sup>	No Minimum	1	No Bonus
Open Lands <sup>7</sup>	No Minimum	1 du/5 acres	No Bonus
Density Reduction/ Groundwater Resource <sup>11</sup>	No Minimum	1 du/10 acres	No Bonus
Wetlands <sup>8</sup>	No Minimum	1 du/20 acres	No Bonus
New Community	1	6	No Bonus
University Community <sup>9</sup>	1	2.5	No Bonus

CLARIFICATIONS AND EXCEPTIONS

- <sup>1</sup> See the glossary in Chapter XII for the full definition of “density.”
- <sup>2</sup> Adherence to minimum densities is not mandatory but is recommended to promote compact development.
- <sup>3</sup> These maximum densities may be permitted by transferring density from non-contiguous land through the provisions of the Housing Density Bonus Ordinance (No. 89-45, as amended or replaced) and the Transfer of Development Rights Ordinance (No. 86-18, as amended or replaced).
- <sup>4</sup> Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must “acquire” the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Coastal Rural or Greater Pine Island Urban Categories.
- <sup>5</sup> In all cases on Gasparilla Island, the maximum density must not exceed 3 du/acre.
- <sup>6</sup> Within the Buckingham area, new residential lots must have a minimum of 43,560 square feet.
- <sup>7</sup> The maximum density of 1 unit per 5 acres can only be approved through the planned development process (see Policy 1.4.4), except in the approximately 135 acres of land lying east of US41 and north of Alico Road in the northwest corner of Section 5, Township 46, Range 25.
- <sup>8</sup> Higher densities may be allowed under the following circumstances:
- (a) If the dwelling units are relocated off-site through the provisions of the Transfer of Development Rights Ordinance (No. 86-18, as amended or replaced); or
  - (b) Dwelling units may be relocated to developable contiguous uplands designated Intensive Development, Central Urban, or Urban Community at the same underlying density as is permitted for those uplands, so long as the uplands density does not exceed the maximum standard density plus one-half of the difference between the maximum total density and the maximum standard density; or
  - (c) Dwelling units may be relocated from freshwater wetlands to developable contiguous uplands designated Suburban or Outlying Suburban at the same underlying density as is permitted for those uplands, so long as the uplands density does not exceed eight (8) dwelling units per acre for lands designated Suburban and four (4) dwelling units per acre for lands designated Outlying Suburban, unless the Outlying Suburban lands are located in those areas described in Note 6 above, in which case the maximum upland density will be three (3) units per acre.
- <sup>9</sup> Overall average density for the University Village sub-district must not exceed 2.5 du/acre. Clustered densities within the area may reach 15 du/acre to accommodate university housing.
- <sup>10</sup> In the Rural category located in Section 24, Township 43 South, Range 23 East and south of Gator Slough, the maximum density is 1 du/2.25 acres. (Added by Ordinance No. 02-02)
- <sup>11</sup> The maximum gross residential density can be increased only if the dwelling units are relocated off-site to one of the Mixed-Use Communities designated on Map 17 through the provisions of the DR/GR Transfer of Development Rights program described in Policy 30.3.3.

**Additional Staff Recommendation:** An additional sentence should be added to the end of Footnote 11: Any increases in allowable dwelling units resulting from this TDR program may not exceed a cumulative total of 6,000 dwelling units.” Dover-Kohl concurs with this change.

**(g) Amend Table 1(b) of the Future Land Use Map Series (the acreage allocation table) in Planning Community #18 only so that industrial acreages reflect the acreage of limerock mining pits needed to meet local and regional demand**

**Original Dover-Kohl proposal:**

Future Land Use Classification	Lee County Totals	18 - Southeast Lee County
Intensive Development	1,325	0
Central Urban	14,787	0
Urban Community	18,622	0
Suburban	16,635	0
Outlying Suburban	4,105	0
Sub-Outlying Suburban	1,531	0
Industrial Development	79	0
Public Facilities	1	0
University Community	850	0
Industrial Interchange	0	0
General Interchange	42	15
General/Commercial Interchange	0	0
Industrial/Commercial Interchange	0	0
University Village Interchange	0	0
New Community	900	0
Airport	0	0
Tradeport	9	0
Rural	8,384	0
Rural Community Preserve	3,046	0
Coastal Rural	1,300	0
Outer Island	202	0
Open Lands	2,805	0
Density Reduction/ Groundwater Resource	6,905	4,000
Conservation Lands Uplands	0	0
Wetlands	0	0
Conservation Lands Wetlands	0	0
<b>Total Residential</b>	<b>81,528</b>	<b>4,015</b>
Commercial	12,763	38
Industrial	6,620	7,246
<b>Non Regulatory Allocations</b>		
Public	82,192	12,000
Active Agriculture	24,957	7,920
Passive Agriculture	45,859	18,000
Conservation (wetlands)	81,948	31,530
Vacant	21,308	500
<b>Total</b>	<b>357,175</b>	<b>81,249</b>
Population Distribution *	495,000	1,270

\* Population for unincorporated Area of Lee County

**Staff report proposal:**

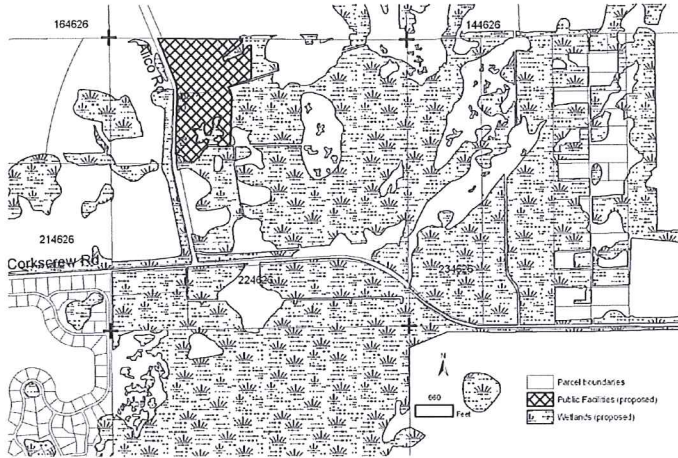
Future Land Use Classification	Lee County Totals		Southeast Lee County	
	Adopted	Proposed	Adopted	Proposed
Intensive Development	1,325	1,325	0	0
Central Urban	14,787	14,787	0	0
Urban Community	18,622	18,622	0	0
Suburban	16,635	16,635	0	0
Outlying Suburban	4,105	4,105	0	0
Sub-Outlying Suburban	1,531	1,531	0	0
Industrial Development	79	79	0	0
Public Facilities	1	1	0	0
University Community	850	850	0	0
Burnt Store Marina Village	4	4	0	0
Destination Resort Mixed Use Water Dependent	8	8	0	0
Industrial Interchange	0	0	0	0
General Interchange	42	42	15	15
General/Commercial Interchange	0	0	0	0
Industrial/Commercial Interchange	0	0	0	0
University Village Interchange	0	0	0	0
New Community	900	900	0	0
Airport	0	0	0	0
Tradeport	9	9	0	0
Rural	8,320	8,320	0	0
Rural Community Preserve	3,046	3,046	0	0
Coastal Rural	1,300	1,300	0	0
Outer Islands	202	202	0	0
Open Lands	2,805	2,805	0	0
Density Reduction/Groundwater Resource	6,905	6,905	4,000	4,000
Conservation Lands Uplands	0	0	0	0
Wetlands	0	0	0	0
Conservation Lands Wetlands	0	0	0	0
<b>Total Residential</b>	<b>81,476</b>	<b>81,476</b>	<b>4,015</b>	<b>4,015</b>
<b>Commercial</b>	<b>12,763</b>	<b>12,763</b>	<b>38</b>	<b>38</b>
<b>Industrial</b>	<b>6,620</b>	<b>13,801</b>	<b>65</b>	<b>7,246</b>
<b>Non Regulatory Allocations</b>				
Public	82,192	82,192	12,000	12,000
Active Agriculture	24,957	17,776	15,101	7,920
Passive Agriculture	45,859	45,859	18,000	18,000
Conservation (wetlands)	81,948	81,948	31,530	31,530
Vacant	21,360	21,360	500	500
<b>Total</b>	<b>357,175</b>	<b>357,175</b>	<b>81,249</b>	<b>81,249</b>
Population Distribution*	495,000	495,000	1,270	1,270

\* Population for Unincorporated Area of Lee County

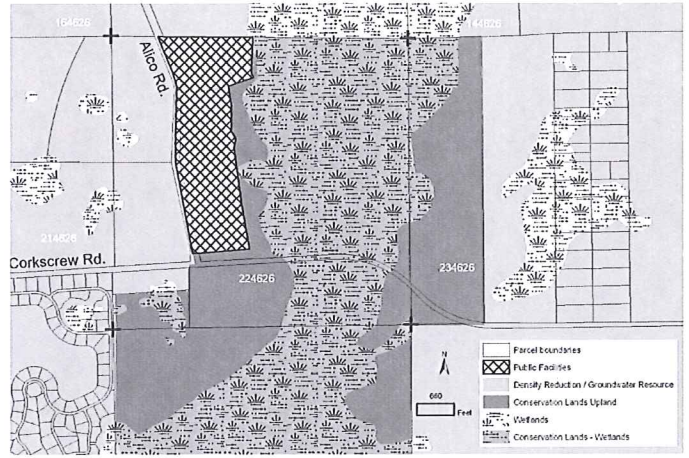
**Update:** Dover-Kohl concurs with the revisions to Table 1(b) as proposed in the staff report.

**(h) Amend Map 1 of the Future Land Use Map Series to adjust the boundaries of the “Public Facilities” designation for the Corkscrew water treatment plant**

**Original Dover-Kohl proposal:**

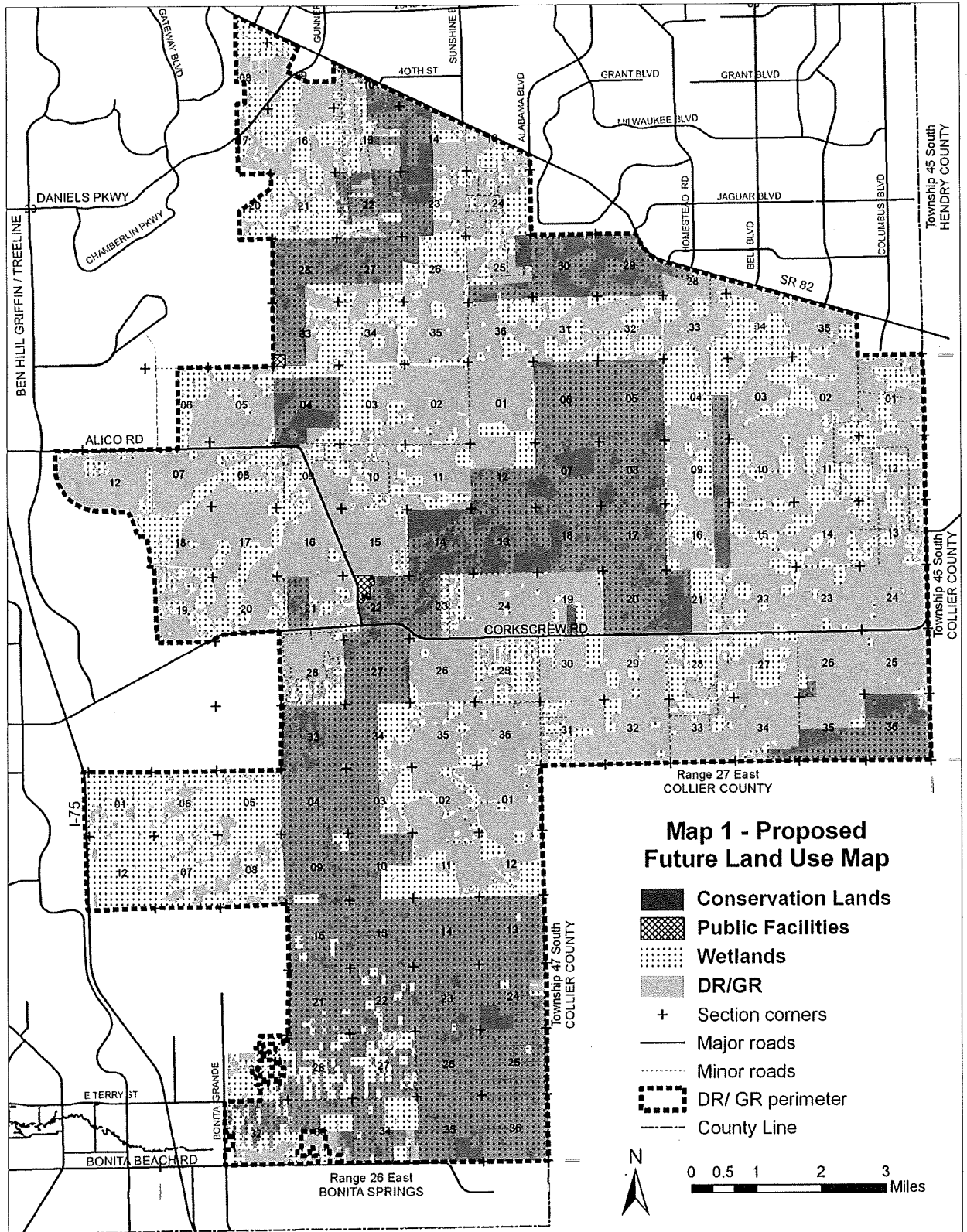


**Staff report proposal (which is retain the full size of existing “Public Facilities” designation, as depicted below:**

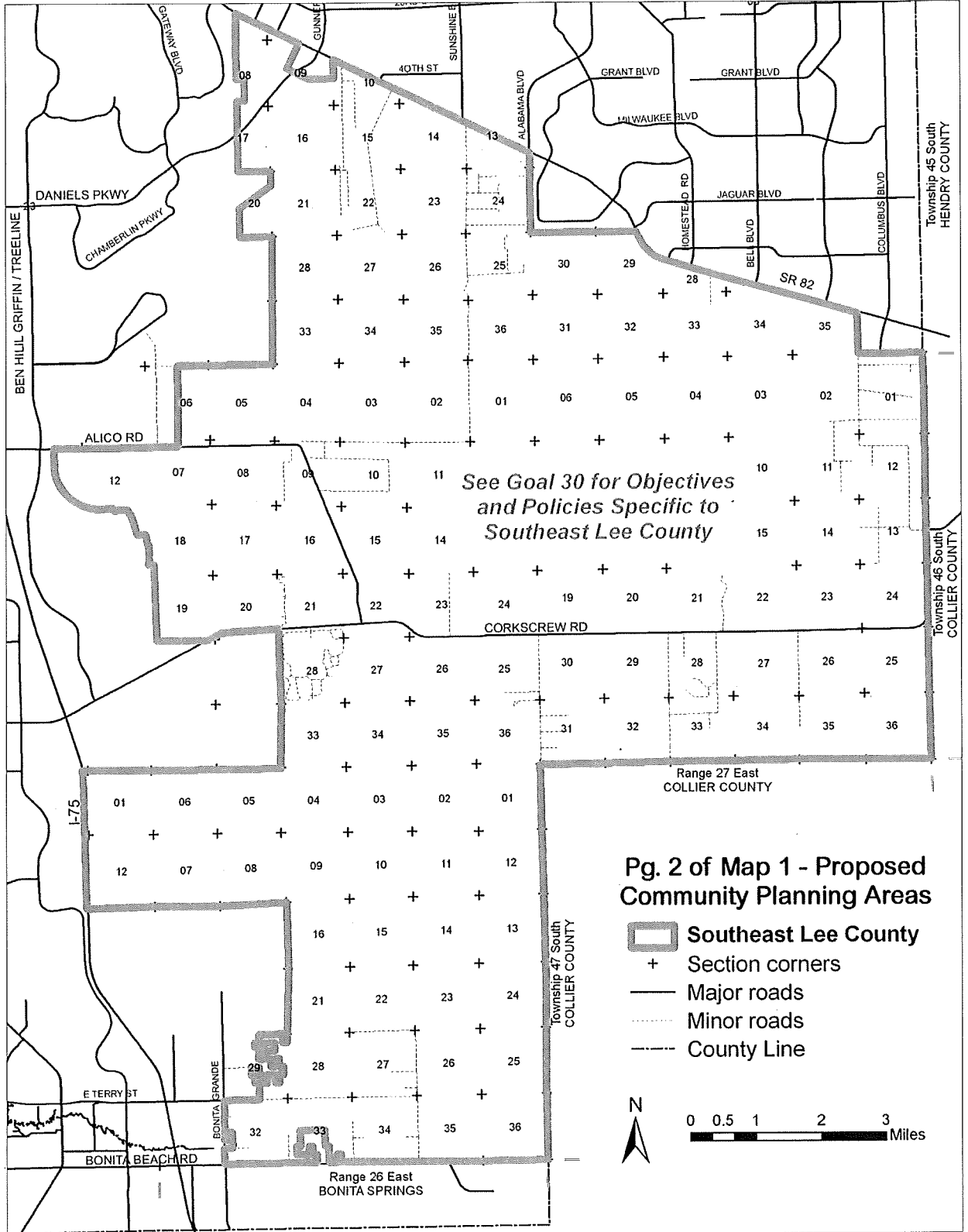


**Staff Rational:** Lee County Utility’s staff have reviewed the proposed change and are recommending that it not be transmitted.

**(i) Amend Map 1 of the Future Land Use Map Series to adjust the boundaries of the “Wetlands” and “Conservation Lands” (both uplands and wetlands) designations**

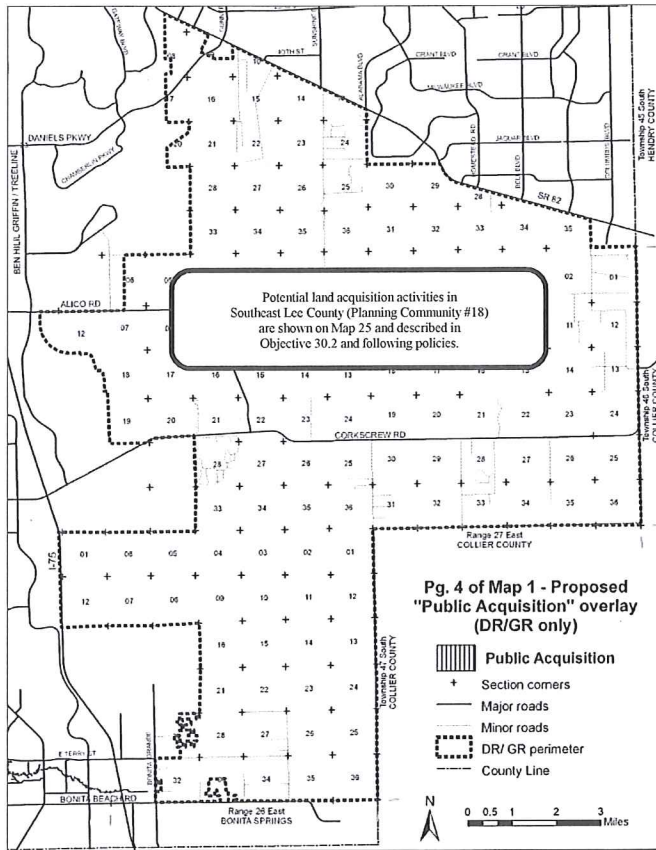


**(j) Amend Page 2 of Map 1 of the Future Land Use Map Series to add a boundary and text for Southeast Lee County**

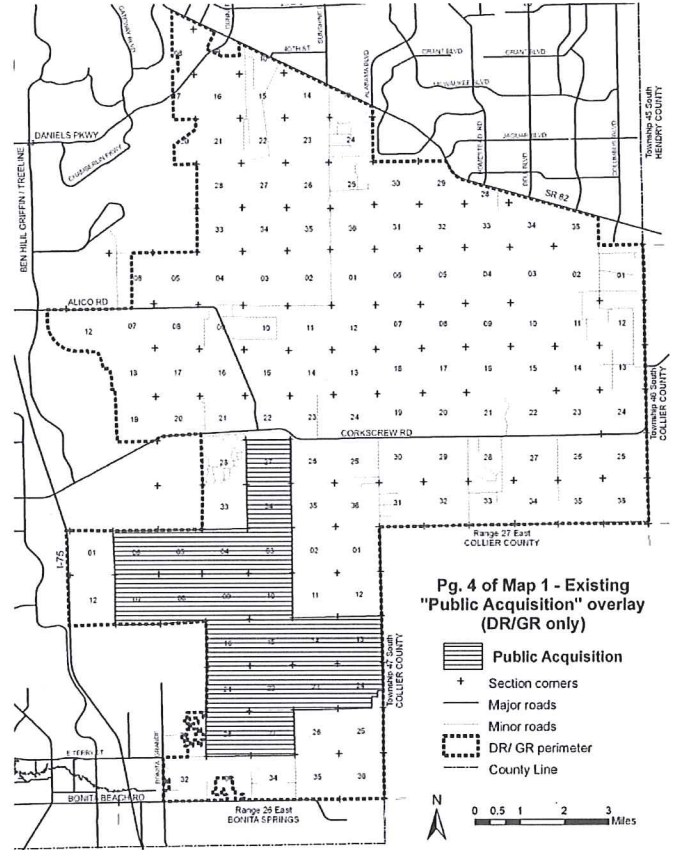


**(k) Amend Page 4 of Map 1 of the Future Land Use Map Series to update the public acquisition overlay in Planning Community #18 only**

**Original Dover-Kohl proposal:**

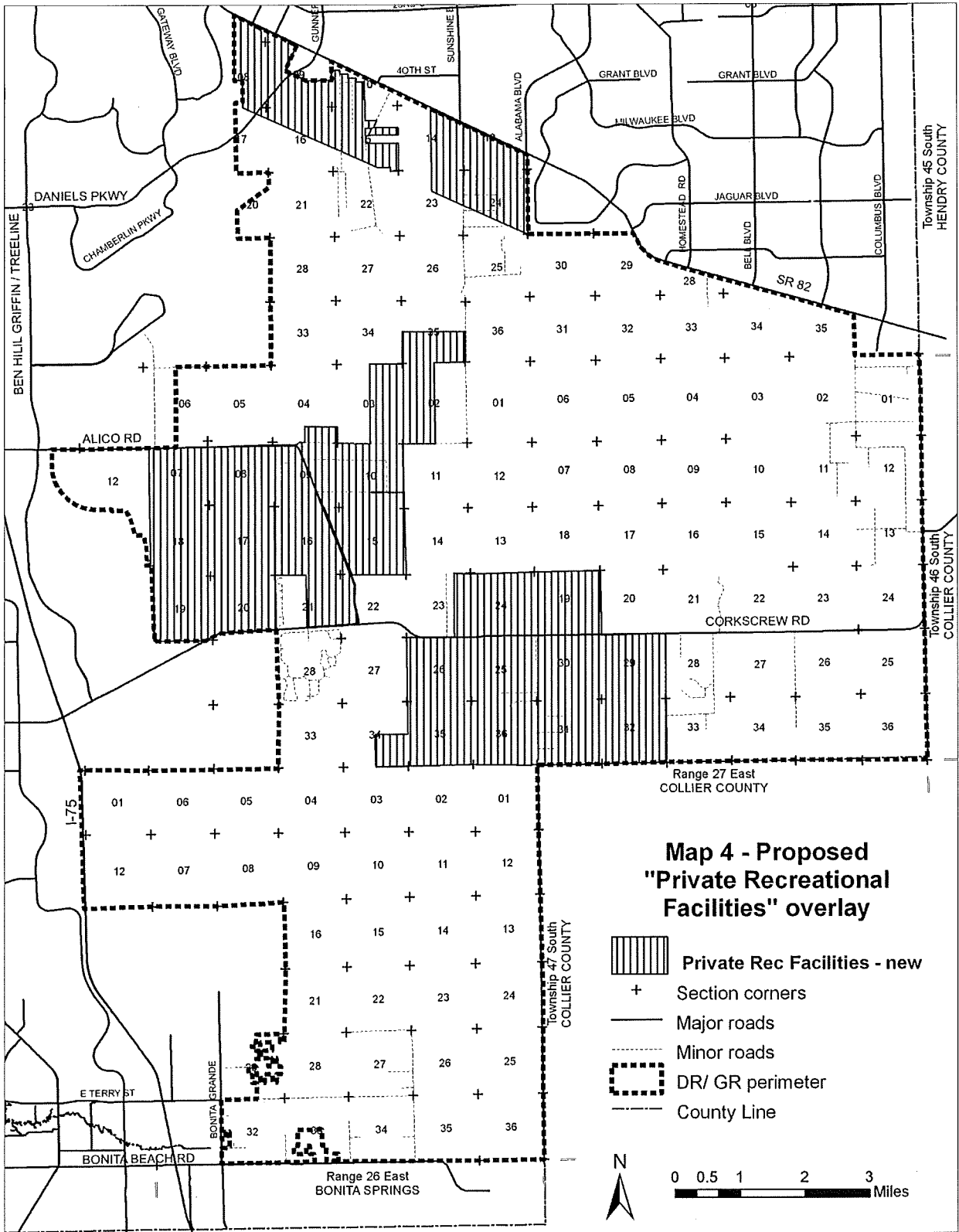


**Staff report proposal:**



**Update:** As described in section (q) below, Dover-Kohl concurs with the relocation of the priority restoration areas to this map, instead of creating a separate Map 25. Section (q) describes several related changes that will be required; in addition to those changes, the proposed note on the Dover-Kohl map shown above would not be needed, nor would the prior hatching as shown in the map on the right above. In their place, this map would show the DR/GR priority restoration areas as previously proposed for Map 25.

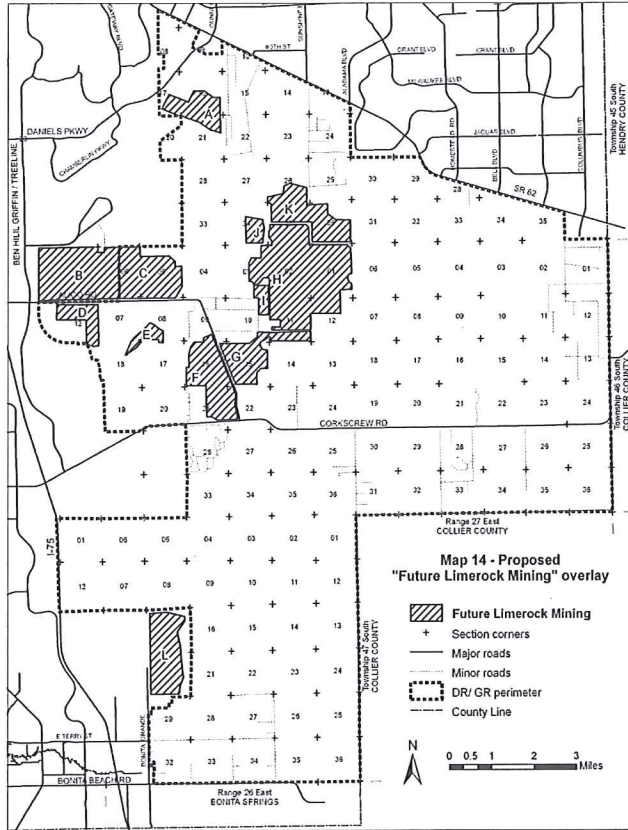
**(l) Amend Map 4 of the Future Land Use Map Series to eliminate public lands and completed mining pits from the "Private Recreational Facilities" overlay**



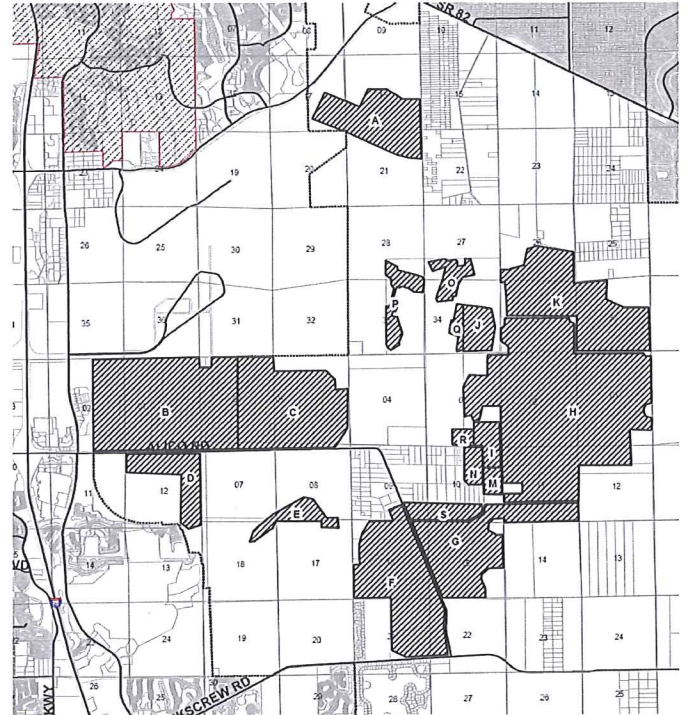


**(m) Amend Map 14 of the Future Land Use Map Series to designate a “Future Limerock Mining” overlay**

**Original Dover-Kohl proposal:**



**Staff report proposal:**

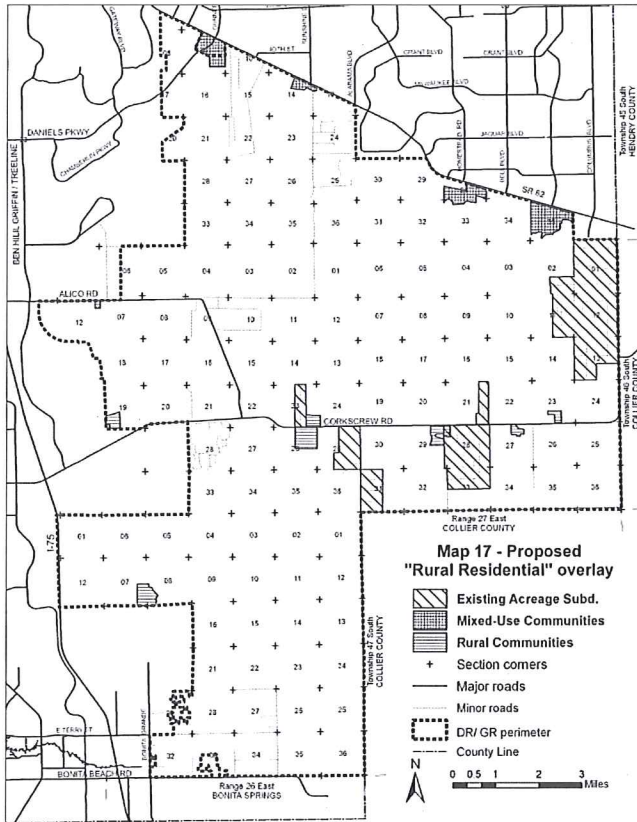


DELETE: Areas A, B, D, and E  
 ADD: Areas M, N, O, P, Q, R, and S

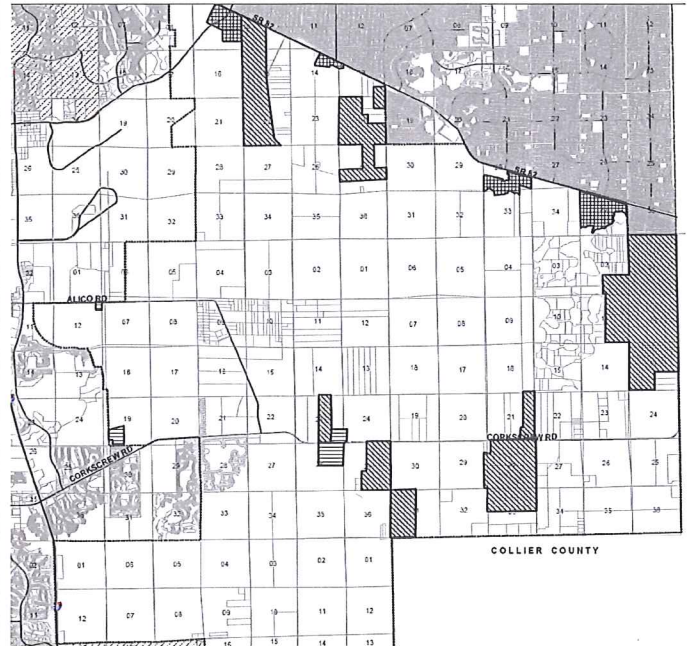
**Update:** Staff has reviewed evidence submitted by Galvano Development that indicates minable limerock under the easterly 240 acres of Area B. That tract is bounded on the west by Airport Haul Road and on the east by Area C, which contains an active limerock mine that is currently in the rezoning process to expand its pits to the westerly edge of Area C. Staff no longer objects to the inclusion of the Galvano/Backe tract in the Future Limerock Mining overlay on Map 14.

**(n) Add a new Map 17 to the Future Land Use Map Series to designate new "Rural Residential" overlays in Planning Community #18 only**

**Original Dover-Kohl proposal:**



**Staff report proposal:**

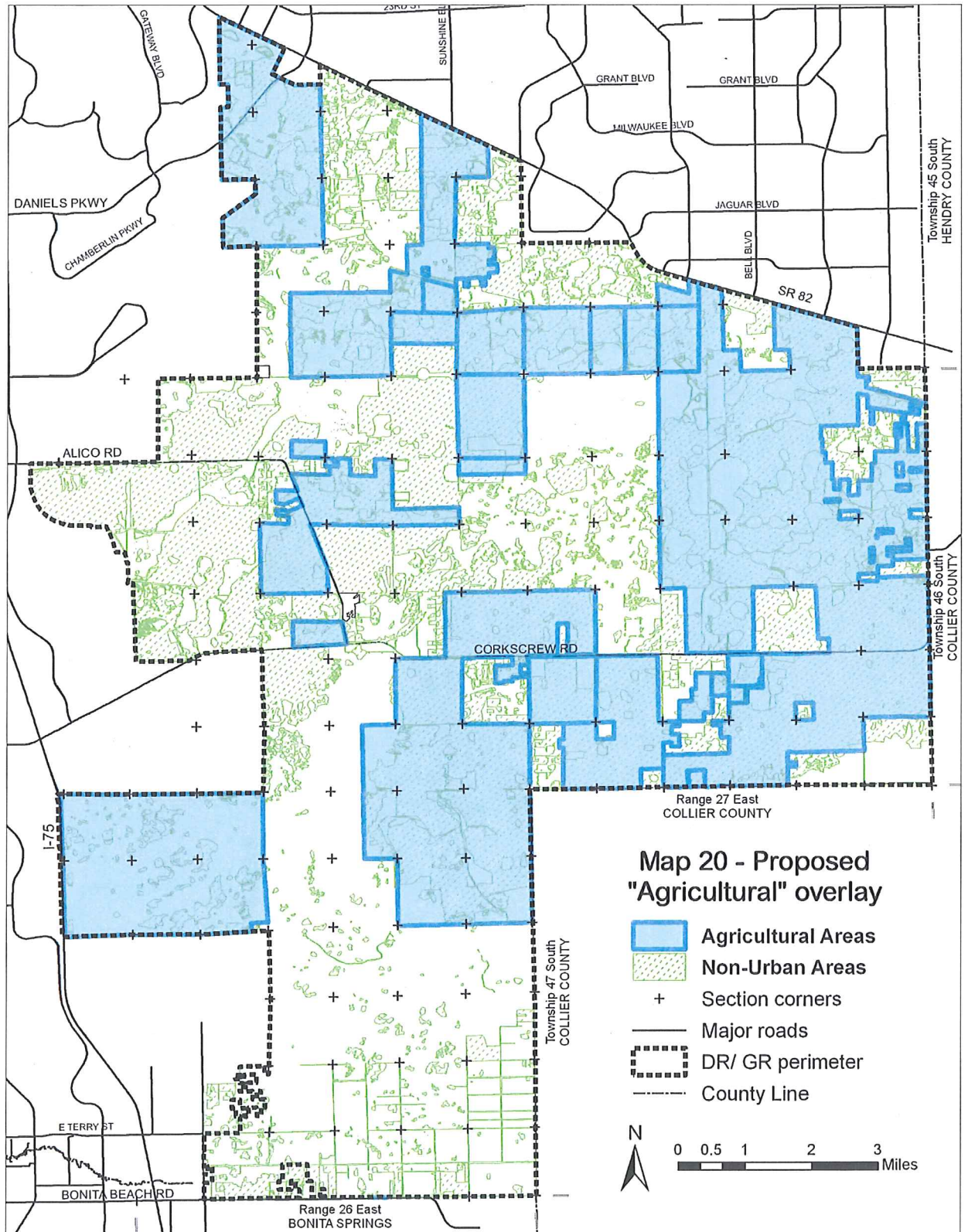


**Modified Dover-Kohl proposal:** The recently released report, *Transferable Development Rights in Southeast Lee County*, recommends expanding the westernmost "Rural Community" along Corkscrew Road into a "Mixed-Use Community," based on a suggestion from planning staff. The expanded boundary proposed by Dover-Kohl should replace the original boundary which was shown on the map on the left above.

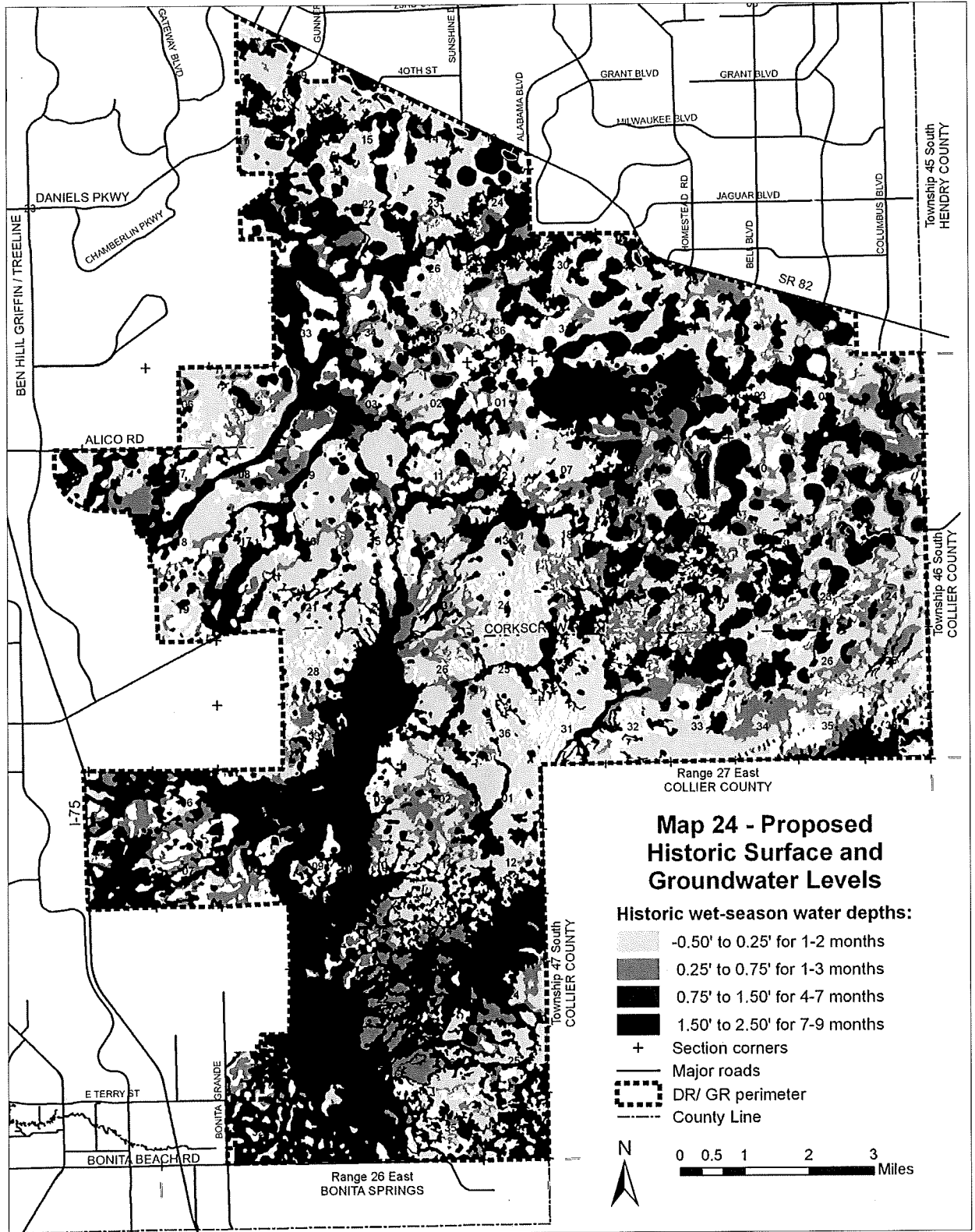
**Other updates:** Dover-Kohl concurs with the additional tracts to be added to the Wildcat Farms "Existing Acreage Subdivision," and doesn't object to the addition of the Timber Trails subdivision if Lee County decides to eliminate the adjoining Area A on the Future Limerock Mining overlay.

**Staff Notation:** The newly released *Transferable Development Rights in Southeast Lee County* contains specific development plans for all of the Rural Communities that were not available at the time staff completed its original analysis. Staff is still debating whether the extreme easterly Rural Communities should be included or if these properties should only utilize the TDR procedures..

(o) Amend Map 20 of the Future Land Use Map Series, the "Agricultural" overlay, to correctly reflect the current extent of contiguous agricultural parcels in Planning Community #18 only

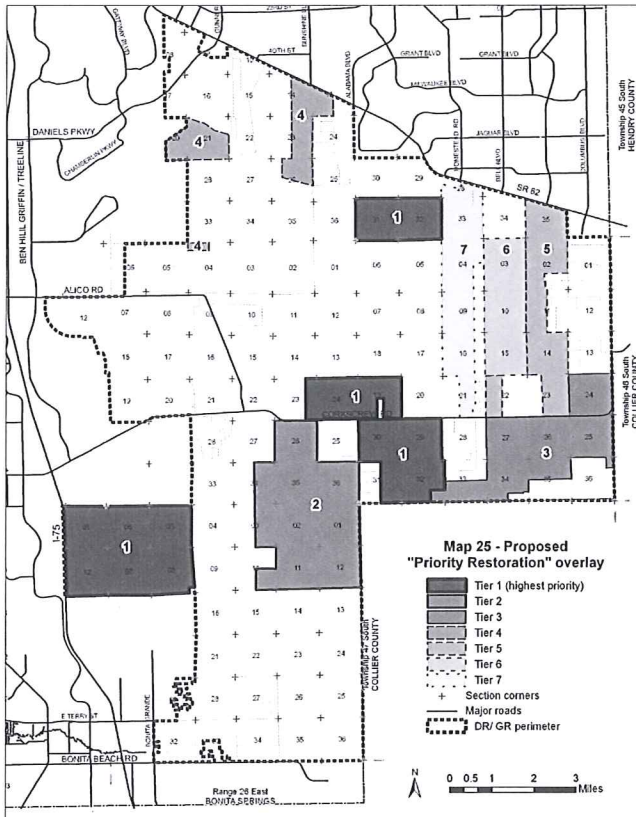


**(p) Add a new Map 24 to the Future Land Use Map Series, the “Historic Surface and Groundwater Levels” overlay (Planning Community #18 only)**



(q) Add a new Map 25 to the Future Land Use Map Series, the “Priority Restoration” overlay, to suggest potential acquisition patterns in Planning Community #18 only

**Original Dover-Kohl proposal:**



**Staff report proposal:**

Accept the Dover-Kohl proposal, but instead of creating a new Map 25, add this overlay to Page 4 of Map 1.

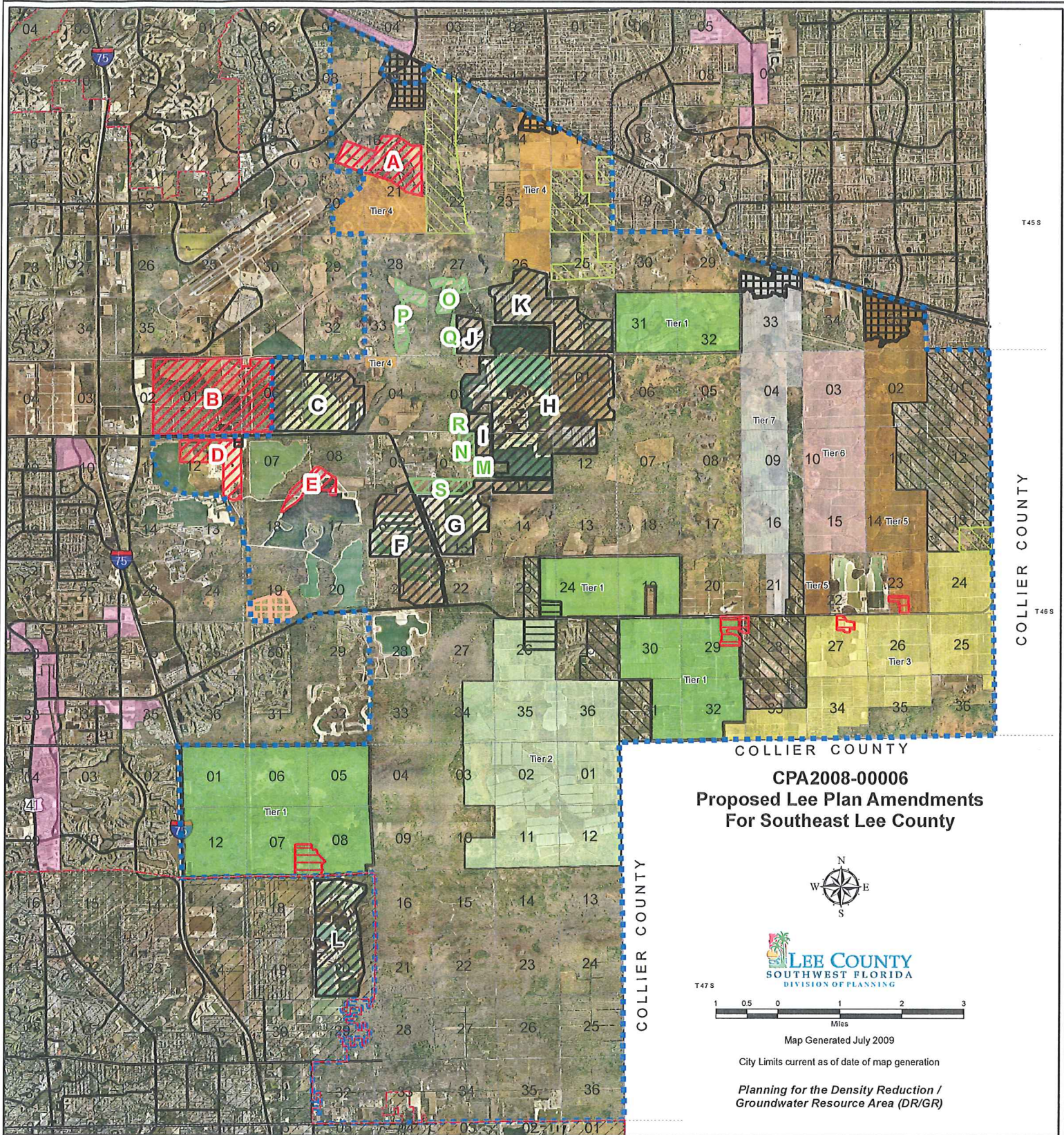
**Additional Staff Recommendation:** Dover-Kohl concurs with the suggestion to relocate the priority restoration mapping to Page 4 of Map 1 rather than creating a separate Map 25. To carry this out without confusing the priority restoration overlays with the other (non-DR/GR) designations on Page 4 of Map 1, the following changes to Policy 1.7.7 are needed:

*POLICY 1.7.7: The Public Acquisition overlay zone designates two types of critical natural resource lands:*

- 1. Except in Southeast Lee County: Areas that have been targeted for public acquisition by federal, state, regional, and/or local agencies.*
- 2. In Southeast Lee County only: Tracts not formally targeted for public acquisition but where restoration would be most critical to restore historic surface and groundwater levels and to connect existing corridors or conservation areas (see Policies 30.2.2 and 30.2.4).*

*This overlay does not restrict the use of the land in and of itself. It will be utilized for informational purposes since this map will represent a composite of potential public acquisition activities in the county.*

In addition, Policies 30.2.2, 30.2.3, and 30.2.6 would need minor rewording to adjust all prior references to Map 25, and proposed Policy 1.7.15 would no longer be needed. These changes have already been incorporated in this document. Dover-Kohl concurs with all of these changes.



**CPA2008-00006**  
**Proposed Lee Plan Amendments**  
**For Southeast Lee County**



Map Generated July 2009

City Limits current as of date of map generation

*Planning for the Density Reduction / Groundwater Resource Area (DR/GR)*

**Mixed-Use Communities**

- staff concurs with Dover Kohl recommendation
- Dover Kohl recommends changing to Mixed-Use Community

**Rural Communities**

- staff concurs with Dover Kohl recommendation
- staff recommends eliminating this area

**Existing Acreage Subdivisions**

- staff concurs with Dover Kohl recommendation
- staff recommends adding this area

**Future Limerock Mining Areas**

- staff concurs with Dover Kohl recommendation
- staff recommends eliminating this area
- staff recommends adding this area

**Priority Restoration**

- Tier 1 (highest priority)
- Tier 2
- Tier 3
- Tier 4
- Tier 5
- Tier 6
- Tier 7
- DR/GR perimeter
- City Limits
- Mixed Use Overlay

**Miller, Janet**

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**From:** Ron Inge [ringle@landsolutions.net]  
**Sent:** Tuesday, August 11, 2009 9:01 AM  
**To:** Miller, Janet; O Connor, Paul; Noble, Matthew  
**Subject:** DRGR Minutes of LPA

Although I had a conflict of interest and could not vote on the amendment proposal, I did mention for the record several things that the LPA should keep in mind when deciding what course of action to take. I think these items are important for the BOCC to see since they will have a large agenda and won't have the benefit of three separate days of input from the public, consultants, and others, as we did.

To the extent you can include these in the minutes, please consider.

- The goal of achieving 1953 water levels in DRGR may be in conflict with development that has occurred within, or adjacent to, the DRGR, since these were not developed to those standards. For example, Wildcat Run, and other residential subdivisions on Corkscrew Road, FGCU, SW International Airport, Miromar.
- There are too few identified Mixed Use opportunities for which to utilize TDR's.
- The identified Mixed Use opportunities are, for the most part, on SR82 which has road concurrency problems making the ability to have a functioning TDR program difficult.
- The TDR report identified that more areas to transfer density add to the success of the program.
- The TDR report clearly indicated that the ability to increase density has to be by right in order to achieve success of the program. The BOCC has not had the opportunity to have that discussion.
- There has been no discussion about intensity of commercial or industrial use in the designated Mixed Use areas, nor how to promote these opportunities, especially in light of the designated areas being adjacent to Lehigh Acres with its lack of commercial and industrial lands.
- Should the site location standards be modified to promote commercial/retail at the mixed use areas?
- There are conflicts between the AG overlay map and the mining and residential areas.
- Is a planning horizon of 2030 adequate for mines since it is a competing land use and mines typically have to plan for many decades to ensure adequate supply.
- What is the purpose for requiring that the future use of mining lands be submitted when applying for permitting since more focus may be placed on the future use than on the current application. The future use is not binding, but is informational, so why create the extra concern or work for something that is not binding.
- The original Priority Restoration Map was for acquisition; however, this strategy was removed from the recent report. That would lead one to believe that regulatory control is the next solution, which may expose the county to a takings claim.
- The Natural Resource Strategies report has not been reviewed in detail and it is uncertain how it applies to the proposed amendments or how it fits in the regulatory framework.
- There is a hydrogeological and water modeling report that has not been completed and that is a crucial component. It is unknown how that report will affect the proposed amendments and also how that report will fit in the regulatory framework.

Ronald E. Inge  
 Land Solutions, Inc./Development Solutions, LLC  
 4571 Colonial Blvd.  
 Suite 102  
 Fort Myers, FL  
 Phone 239-489-4066  
 Fax 239-481-8477

8/17/2009

# Holland & Knight

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Holland & Knight LLP | www.hklaw.com

Roger W. Sims  
407.244.5107  
rsims@hklaw.com

October 28, 2009

By Hand Delivery

Lee County, Florida  
Board of County Commissioners  
Old Lee County Courthouse  
2120 Main Street  
Fort Myers, Florida 33901

Re: Lee Plan DR/GR Amendments  
Transmittal Hearing

Dear Commissioners:

We represent Cemex Construction Materials Florida LLC (hereafter, "Cemex" or the "Company"). Cemex is the operator of a limestone quarry on Alico Road in Lee County and is an affected party as defined in section 163.3184(1)(a), Florida Statutes (2009). The Company has critical interests at stake in the Density Reduction / Groundwater Resource ("DR/GR") comprehensive plan amendments before the Board of County Commissioners ("Board") on October 28th, 2009. This letter, the expert witness reports submitted to the record, and the accompanying live remarks by the Company's experts and counsel on October 28, 2009 will supplement its presentations of June 22nd, 2009 and July 27<sup>th</sup>, 2009 before the Local Planning agency (LPA) and September 24th, 2009 before the BoCC.

Cemex has attempted to work with staff on mutually acceptable approaches to the DR/GR Comprehensive Plan Amendments (the "Amendments") as prepared by Dover Kohl and Associates and dated May, 2009. Unfortunately, the Amendments and accompanying staff report before the Board for transmittal are unacceptable and not supported by proper data and analysis. Furthermore, the Amendments do not reflect consistency with existing components of the Lee Plan, and raise serious property rights issues. We urge the Board to take additional time to have the Amendments properly vetted by the LPA, peer reviewed where appropriate (e.g the hydrology studies) and subject to meaningful public input.

DR/GR transmittal  
10-28-09



Our timing and procedural concerns are summarized in our letter to County Attorney David Owen dated September 17<sup>th</sup>, 2009 (**Exhibit A**). We are also submitting to the record reports supporting the testimony of our experts. These reports include the following:

**Hydrology: (Exhibit B)** Mark Stephens, P.G./ P.E. has conducted initial reviews of the DHI modeling report to Lee County and another hydrology study concerning "innovative" mining approaches as prepared by SDI consultants and included as chapter 4 of the report entitled "Natural Resource Strategies for Southeast Lee County" (July 2009).

**Aggregate Resources [Exhibit C]:** We have attempted to obtain the basis for Map 14 of the Amendments (mining overlay) in order to conduct a review and submit comments. Map 14 has very serious implications because it has been characterized as "regulatory" in nature (addressed by the LPA at its transmittal hearing July 27<sup>th</sup>, 2009). We filed a public records request in June, 2009 and requested the information supporting Map 14. County staff was responsive and cooperative but little detail regarding map 14 was available from the County staff files. We have not received public records from contractors to the County and as yet have no evidence supporting (a) the presence within the Map 14 approved mining areas of sufficient recoverable aggregate resources to meet the needs of the County and region or (b) the basis (if any) for excluding development of aggregate resources outside of the Map 14 mining area. These points raise serious property rights issues. We refer you to a recent legal memorandum from the Office of the County Attorney attached hereto as **Exhibit C**.

**Historic surface and groundwater levels overlay [Exhibit D]:** Proposed map 24 addresses historic water levels in the DR/GR and the Amendments apparently make restoration of 1953 historic levels a goal for the Lee Plan. The meaning of Map 24 was not clearly established by the testimony before the LPA and is not explained adequately in the Amendments or supporting documents. . We question the methodology used in developing new map 24 and the reliability of the results. Attempting at this time to maintain historic surface and groundwater levels is unreasonable and unrealistic. Tom McLean, P.E. addresses the subject in his report. included as **Exhibit D**.

**Plan Consistency:** Darren Stowe, AICP has evaluated the Amendments and outlines numerous problems with the proposed language. His report is attached as **Exhibit E**. Among other points, Mr. Stowe notes the requirement in the existing, adopted Lee Plan for an economic evaluation of the Amendments, which has not been conducted. In the absence of economic impact details, the Board is acting on incomplete information and is not able to properly assess the full public interest implications of the Amendments. Aggregate production is a matter of critical state importance as set forth in House Bill 5013 (signed into law May 27, 2009) and should be given substantially more deference by Lee County than provided by the Amendments. As a corporate citizen, Cemex is legally entitled to fair consideration of the effects on its rights and the associated impacts on the overall public interest. As currently structured, the Amendments would

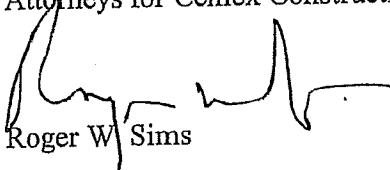
Lee County Commissioners  
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essentially mandate termination of the Company's operations once its existing operations on Alico Road are mined out . Two remaining operators would control aggregate production in Southwest Florida solely due to the Amendments. This has many negative implications that the Board should be anxious to review and understand before taking action.

We vigorously object to transmittal of the Amendments until these issues are addressed.

Sincerely yours,

HOLLAND & KNIGHT LLP  
Attorneys for Cemex Construction Materials Florida LLC..

  
Roger W. Sims

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September 17, 2009

David M. Owen, Esq.  
Lee County Attorney  
P.O. Box 398  
Ft. Myers, Fl. 33902

Via E-mail (OWENDM@leegov.org)

Re: DR/GR Comprehensive Plan Amendments  
Transmittal Hearing of 9/24/09

Dear Mr. Owen:

We represent Cemex USA in the Density Reduction / Groundwater Resource (DR/GR) comprehensive plan amendment proceedings (the "Proceedings"). Cemex is an affected party as defined in section 163.3184(1)(a), Florida Statutes (2008), and has critical interests at stake. We intend to present witnesses and other evidence at the Board hearing September 24, 2009. This presentation will supplement our presentations of June 22 and July 27<sup>th</sup> before the Local Planning agency (LPA).

We are writing to request clarification of the time limits to be imposed at the September 24 transmittal hearing. Our witnesses will need more than the typical 3 minutes to communicate the numerous, complex issues involved in the Proceedings to the Board.

We are also writing to suggest that the DR/GR amendments are not properly supported by data and analysis, and that critical information has not been made available to the public in a timely manner. For example, the complex DHI hydrology study was released in final form only last Thursday, September 10<sup>th</sup>. Furthermore, the LPA transmittal on July 27<sup>th</sup> was based on incomplete and misinterpreted information, as noted by members of the LPA on the record. We are still attempting to obtain public records concerning Map 14 (mining overlay) and have not yet had an opportunity to review the supporting data and analysis (if any). A remand of the entire matter to the LPA is strongly indicated by the facts. For example, the DHI hydrology study requires peer review in order to be defensible and no such review has been conducted. Further proceedings before the LPA could allow for peer review and appropriate public input concerning the results.

Cemex Ex A

David M. Owen  
September 17, 2009  
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The DR/GR Comprehensive Plan Amendments, as currently proposed without proper supporting data and analysis, have enormous property rights implications and do not reflect full and fair public input as required by section 163.3181, Florida Statutes (2008). Furthermore, section 163.3174(4), Florida Statutes (2008) delegates responsibility for the comprehensive planning program to the LPA, including responsibility for appropriate public hearing procedures. Lee County's own administrative procedures also require public participation "to the fullest extent possible" (see AC-13-7). A careful review of the LPA transmittal hearing transcript will confirm that inadequate and inconsistent information prevented an opportunity for public participation to the fullest extent possible. (excerpts attached – vertical lines between numbering and text at the left are added for emphasis; pages with no emphasis are included for purposes of context). We ask that you consider these comments and let us have your response as soon as possible.

Thank you.

Sincerely yours,

HOLLAND & KNIGHT LLP  
Attorneys for Cemex USA

By: \_\_\_\_\_

Roger W. Sims

Cc: County Commissioners  
Andrea Fraser, Lee County  
Dan Beatty, Cemex  
Tracy Bryant, Cemex  
Matt Mouncey, Cemex  
Neale Montgomery, Pavese Law Firm  
Katherine O'Donniley, Holland & Knight  
(all by E-mail)



1 transfers for residentially where in these areas  
2 designated on State Road 82 and some other  
3 areas are theoretically mixed-use type of  
4 projects. We haven't talked about  
5 intensification of industrial or commercial  
6 uses there, which is certainly near Lehigh is  
7 what we really need. We just heard that  
8 discussion a few moments ago, so we haven't  
9 talked about at all how are we going to  
10 incentivize more intense development of that  
11 measure, especially considering how close to  
12 Lehigh Acres it is, so I think that's a very  
13 important point, that I don't know of anything  
14 that's been addressed there.

15 Secondly, he did make the point and in  
16 section three of the TDR proposal that we have  
17 has some very detailed site plans by community,  
18 rural communities, Self Farms rural community  
19 Edison Farms rural community, (inaudible) and  
20 so forth. We need to make sure that it's  
21 clearly stated for purposes of the record that  
22 those are delustrative on what could  
23 theoretically could happen. These aren't  
24 regulatory. That doesn't mean that is the  
25 community that will be there; that is the



1 is not unreasonable at all because you have to  
2 provide for the viability of the resource and  
3 the activities that take place nearby that  
4 would prohibit the recovery of that resource,  
5 20 years may be too short a horizon to look at  
6 in that regard. I'm still concerned about the  
7 1953 levels, but I think that Neale Montgomery  
8 talked about the very points that the  
9 regulations say that make those more binding,  
10 Mitch talked about it earlier, I think that is  
11 a very big concern that we can talk all day  
12 around it, about, well, we'll consider and  
13 we'll think about when that becomes cast in  
14 stone, I think there's going to be a big issue  
15 on how to deal with that and in fact if it is  
16 in conflict with what the District has already  
17 adopted, that's very problematic, and I don't  
18 know if we've heard anything on that except for  
19 the comment Ms. Montgomery made, and I don't  
20 know any more than what I heard there, but that  
21 causes me to have some concerns.

22 I still feel that we have too few  
23 mixed-used communities or uses designated as  
24 receiving zones, not only for the residential  
25 densities that can be transferred by other



1 intensifications, we talked about that again  
2 and again. And with State Road 82 in  
3 particular, we've got concurrency problems that  
4 are not going to be solved for quite sometime,  
5 so we're going to really gut the effectiveness  
6 of the program right off the bat by not having  
7 a place that they can be economically feasible.  
8 I think one of the property owners received a  
9 letter from the Jamison family and they weren't  
10 here to speak this morning as they have in past  
11 meetings, they have property all the way out to  
12 Alico Extension that they were considering uses  
13 for this now, for these types of transfers. I  
14 don't know if because of the uses of the State  
15 Road 82 that still becomes a concurrency  
16 problem whereby theirs wouldn't work or not,  
17 but I think we need to explore more  
18 opportunities to help provide availability to  
19 the TDR program and issues that we have on  
20 State Road 82.

✓ 21 I am concerned with some of the conflicts  
22 in the maps in that some of the overlays of the  
23 AG uses and the mining uses and the priority  
24 zones all mesh on top of each other; which  
25 takes priority there? My concern is that

1 priority acquisition areas are going to take  
2 center stage and the other uses are going to  
3 fall behind that, even though there's not an  
4 identifiable mechanism on how we're going to  
5 fund that acquisition if we remove that word  
6 and talk about the regulatory aspects  
7 controlling it. I'm concerned about how we're  
8 going to accomplish that without enough  
9 information on it.

10 There is a provision that's not been  
11 talked about by anyone that when a mining  
12 operation comes in, we're going to add a review  
13 of future planned uses to determine what effect  
14 that may have on the approval and it's just  
15 informational only. I don't know where that's  
16 going to go. I can see getting hung up on what  
17 are you going to do with this and when are you  
18 going to do it? If I'm going to, I'm going to  
19 go a fowl and I don't want to do anything and  
20 if you propose any use then that's going to be  
21 the focus of the use on the mining. You can't  
22 have elementary school because of this or that,  
23 an issue that still needs to be dealt with.

24 We talked a bit about the TDR issues and  
25 another point on the mixed-use communities, and

1 I'm may be mistaken on this, but I'm concerned  
2 that they may not meet the site location  
3 standards. And if so, does that preclude the  
4 intensification of commercial and industrial  
5 uses at those locations because we don't meet  
6 those standards that are currently within the  
7 plan.

8 There may be a condition that may waive  
9 that for those. I'm not sure, I remember  
10 reading something about it, maybe it was just a  
11 theoretical discussion, but I think that's  
12 something we need to be concerned about. And  
13 one speaker talked about the DA dot model and  
14 how that would impact the design of mining  
15 operations. I think if you read that report it  
16 talks about how there are many, many  
17 assumptions made, so we need to make sure that  
18 we don't take that as gospel at this point  
19 because it was a model based on some  
20 theoretical inputs which brings me to the point  
21 that a significant amount of the information  
22 that was in the recommendations that we have  
23 are based on modeling that has been proposed  
24 and we'll even acknowledge in some instances  
25 that the input data has not been bedded

1 properly and compared to actual data to insure  
2 that the outcome is what the model is. So  
3 again, my worry is that this is 83,000 acres of  
4 community that we're dealing with here, a  
5 significant amount of property owned by a  
6 variety of people. Some have larger cuts, some  
7 have smaller cuts, to place a regulatory  
8 framework without insuring that we have all the  
9 appropriate data and all the appropriate  
10 information, I think does a disservice to those  
11 property owners. We have the DR/GR study  
12 committee that spent an enormous amount of time  
13 looking into this and hit upon a variety of  
14 issues and analyzing studies. I don't think  
15 the results of that information has been done.  
16 I think they set the stage to look at this,  
17 look at that and outline the things that need  
18 to be reviewed. All that hasn't been completed  
19 yet, so I would caution the LPA not to rush to  
20 move this forward simply because the timing to  
21 try to get it into this particular cycle, I do  
22 not think myself that it's ready to move  
23 forward and although I have a conflict and  
24 can't vote on this, (inaudible).

25 THE CHAIRMAN: I wanted to clarify a

1 couple points, Staff. Is Map 14 and Map 24  
2 both regulatory or for informational purposes?

3 MR. O'CONNOR: The preferred mining area,  
4 which I believe is Map 14, that is regulatory.  
5 I mean, if you're not within the identified  
6 area, you need to make amendments to the plan  
7 to change that and get your property into that  
8 identified area in order to mine it. Map 24 is  
9 not a regulatory map.

10 THE CHAIRMAN: And then we need  
11 clarification on another item, you've heard  
12 here today several different numbers about  
13 TDRs. We heard 5,300, we see 5,300 in the  
14 chart and then we also heard over 14,000, so  
15 what is the number?

16 MR. O'CONNOR: Well, I believe the 14,000  
17 was based on the concept that everybody buys  
18 into the program and everybody makes every TDR  
19 they can make, which clearly Doctor Nicholas  
20 said that's not the case and the projects that  
21 he's worked on and helped implement, I think he  
22 was talking about 20 percent, 80 and 20 --

23 MR. NOBLE: Uh-huh.

24 MR. O'CONNOR: -- so that's where that a  
25 5,300 number comes from. And then we did look

1 at putting that cap at 6,000 of the units that  
2 could go into the DR/GR; that's in the  
3 footnote, the table 1A.

4 THE CHAIRMAN: Thank you.

5 MS. BUTLER: Since Map 14 is regulatory  
6 and there may be some Burt Harris issues, I'm  
7 interested hearing from the county attorney on  
8 that issue.

9 THE CHAIRMAN: Dawn or David, would you  
10 care to comment on Map 14 being regulatory?

11 MR. UHLMAN: Good afternoon,  
12 Mr. Chairman, David Uhlman, county attorney's  
13 office. What is it you'd like to know,  
14 Ms. Butler, that there may be Burt Harris  
15 issues or reverse condemnation issues? Yes,  
16 ma'am, absolutely; that's out there; that's the  
17 best I can tell you right now. Until they come  
18 in -- I'm happy to address it, but I can't give  
19 you have any details until there's claims.

20 THE CHAIRMAN: Okay. Thank you, sir.  
21 Anything else?

22 MS. BUTLER: I guess we received from  
23 Staff a listing where they disagreed with the  
24 consultant, can we hear from other Staff or the  
25 consultant and go through those issues so that

1 will clear out where they disagree?

2 THE CHAIRMAN: That's a good idea.

3 MS. BUTLER: Either now or later,  
4 whatever.

5 THE CHAIRMAN: Let's hear it now. I want  
6 to commend Staff on putting that together; that  
7 was extremely helpful the way you put it  
8 together and really gives us a clearer picture  
9 of where we are in the process.

10 Bill, go ahead, if you would, and tell us  
11 what your take is in terms of where you are and  
12 Staff's recommendations are.

13 MR. SPAKOWSKI: Bill Spakowski, the  
14 Staff's memo lists several points where there's  
15 some disagreement; a few of them are minor, a  
16 few are pretty significant.

17 The first one I list is Policy 117 on  
18 page two. This is something that hadn't come  
19 up before, but in the current Lee plan you're  
20 allowed to receive limerock mining industrial  
21 development land use category and we're  
22 suggesting that that's basically not  
23 appropriate locations for mining. Those  
24 industrial development locations are scattered  
25 around the County and are not somewhere that

1 I'd recommend you blanketly encourage limerock  
2 mining. I don't know if any applications would  
3 ever come into those areas because industrial  
4 park mining being could be very valuable. The  
5 Staff would like to keep it status quo where  
6 you could apply under the plan for limerock  
7 mining and industrial development; that's  
8 really the only issue in the first one.

9 MS. BUTLER: But didn't Staff say that  
10 those areas, there was -- it was not a good  
11 area to mine?

12 MR. SPAKOWSKI: They're all over the  
13 County, so you couldn't make a blanket  
14 statement. We haven't had anybody show  
15 interest in those mining areas, so it's been  
16 sort of moot.

17 Our recommendations did not allow, in the  
18 absence of any demand, need or showing  
19 suitability, leaving that language in the plan  
20 would encourage people show all the surrounding  
21 landowners, industrial or residential, if the  
22 mining were proposed.

23 MR. NOBLE: We do recognize however  
24 although that we have to have mine applications  
25 in those areas previously, they have not been



1 limerock mines, they've been fill pit mines.

2 MR. SPAKOWSKI: If you'll recall, the  
3 language would suggest it would still be okay,  
4 but not limerock, so that's that issue. You  
5 can choose to make a recommendation on that, or  
6 not, as you see fit. Should we go over these  
7 others?

8 THE CHAIRMAN: Yeah. 1.2.2 --

9 MR. SPAKOWSKI: 1.2.2, it's the first  
10 page of this memo and also page 23, this has to  
11 do with a trade port area south of the airport.  
12 At the last meeting Mr. Gallano came forward  
13 and said he owned the west or easterly 240  
14 acres and he did have limerock and he wanted to  
15 stay in the overlay and he since submitted us  
16 sort of (inaudible) that sort of the backed up  
17 that. We shared that with the Staff and their  
18 recommendation now is to go ahead and allow  
19 mining on that tract of trade port, but not on  
20 the rest. Dover Kohl's position is still to  
21 allow limerock mining anywhere in those two  
22 square miles, it's called Area B. Staff is  
23 saying generally not, but that 240 acres --

24 MR. NOBLE: We knew that as a compromise  
25 for Area B, to allow them that 240 acres,

1 basically having the Hall Road, Airport Hall  
2 Road being the dividing line.

3 MS. BUTLER: So then there is a  
4 disagreement?

5 MR. SPAKOWSKI: Yeah, there is still a  
6 disagreement there. The Staff is saying just  
7 allow mining in that one piece and we're  
8 sticking with our original recommendation that  
9 that land, although a lot of the landowners  
10 have shown no interest in doing it and we don't  
11 know how likely it is, still as to location  
12 near the interstate and in the area panthers  
13 and disturbed by the airport and Alico Road, if  
14 somebody wants to mine there, it would be  
15 better alternatives for mining further east, so  
16 there is still some amount of disagreement on  
17 that one.

18 The third one is Policy 30.1.3. It's  
19 discussed in here on page 4 and we have haven't  
20 really talked about this before. It's been a  
21 point of contention between the Staff and Dover  
22 Kohl. In the DR/GR if somebody comes in puts  
23 and golf course there, if they could rezone  
24 they can do that, but they lose their  
25 residential density in that case. We're

1 suggesting the same thing would be true for  
2 mining. Actually, I think the case for doing  
3 that for mining is much, much greater than for  
4 golf course, because if you maintain that  
5 residential density and try and series of lots  
6 around the lake, you basically end up circling  
7 the mine pits with residential development,  
8 spreading that residential development way out  
9 generally into the mining areas. Also these  
10 pits are very much interconnected with our well  
11 fields and there's a lot of concerns about  
12 fertilizer around septic tanks and such being  
13 surrounded by mining field. Dover Kohl's  
14 suggestion is that residential density for the  
15 mining properties can be sold as TDRs, but not  
16 used on site and the Staff's not comfortable  
17 with that, so they brought a map to make that  
18 change.

19 THE CHAIRMAN: What does the Staff have  
20 to say?

21 MR. NOBLE: The current regulations in  
22 Chapter 12 call for this issue to be explored  
23 at the time the mines are approved, the  
24 post-mine use. We think that there's enough  
25 asurety through that process that any post-mine

1 THE CHAIRMAN: And you're recommending  
2 that that not be the case?

3 MR. SPAKOWSKI: Yes, sir.

4 THE CHAIRMAN: And the Staff is saying --

5 MR. NOBLE: That that can be handled  
6 through the existing regulations contained in  
7 Chapter 12.

8 MR. SPAKOWSKI: As you can tell, we  
9 discussed this and understand each other's  
10 positions, but it's just the only things that  
11 we haven't come to an agreement on.

12 THE CHAIRMAN: Well, I think we're in  
13 line for a motion of some type. Does someone  
14 want to make a motion?

15 MS. CALL: I've been a part of this since  
16 the very beginning and I've been very proud to  
17 be a part of this since the very beginning and  
18 I would recommend transmitting this as Staff  
19 recommends in this report, as Staff sees fit.

20 MR. GREEN: Second.

21 THE CHAIRMAN: Any further discussion?

22 MR. INGE: Under discussion, the process  
23 that we're talking about is an abnormal  
24 process, to make sure that we put the right  
25 people in the right locations and do it in a

1 manner that spares the environment, the  
2 landowner, and in a way that there are certain  
3 assurances that it's going to be implemented.

4 There's a lot of folks that have worked  
5 very hard on this that I respect and think very  
6 highly of, not the least of which is Don  
7 Eslick. And he made the point that I really  
8 appreciate and he said you know five, ten years  
9 ago all of these uses that we were talking  
10 about are uses that were permitted and so we're  
11 trying to find a way to move them to reasonable  
12 places, I think his words were, so that they're  
13 not in conflict.

14 In order to do that, I think there's some  
15 mandatory things that we need to make sure that  
16 are in place. The first one is that the TDR  
17 program that does what we want it to do. I  
18 appreciated Doctor Nicholas being here today,  
19 but I think he highlighted some areas that have  
20 not been considered in evaluating -- in the  
21 proposed TDR ordinance that we have in front of  
22 us. Do we have the right ratios of sending to  
23 receiving? Based on the calculations, I think  
24 we're looking at a compensation of per acre of  
25 \$900 per acre. I don't think that is going to

1           achieve the results that we want. So to the  
2           extent that we actually do want to see the goal  
3           implemented, I think we've got to have the  
4           right TDR ordinance. I'm concerned that we've  
5           fallen short of that, not that we can never get  
6           there, but I don't think that we're there yet  
7           today.

8                     I think the point of commercial is a  
9           viable one. What happens if you wind up  
10          getting more commercial receiving sites, less  
11          area for TDR transfers, less compensation for  
12          landowners, but the restrictions are already in  
13          place, so there's also an order of how do we  
14          adopt things and one of the things that Doctor  
15          Nicholas said in other jurisdictions that were  
16          very successful implementing regulations in  
17          conjunction, so there is an understanding of I  
18          do have the by right ability to use these and  
19          I'm concerned that we don't have that in place.

20                    We have not addressed the level of  
21          service issues and we have not addressed the  
22          market issues. One of the things I still have  
23          some confusion about is while we have the Dover  
24          Kohl plan and it's a very attractive plan and  
25          I'm sure there's a lot of folks that would like

1 to live with that, but there hasn't been an  
2 evaluation that everybody would want to live  
3 like that are going to move to those areas.  
4 Are we requiring that we have to develop in  
5 that footprint or is that an option, because  
6 what I think I heard Bill say -- and correct me  
7 if I'm wrong -- is that you said we need to  
8 make sure that those land development  
9 regulations are in place, (inaudible), the by  
10 right program, but I thought the only -- that  
11 the Dover Kohl --

12 MR. SPAKOWSKI: This question is an open  
13 one yet. You really want to have the by right  
14 option. On the other hand, we also want people  
15 to have the ability to propose some sort of  
16 difference, but the question on how much they  
17 can change from these proposals, at what point  
18 have they changed it so much that it shouldn't  
19 be by right, that it should actually be with a  
20 rezoning is a big question we're going to be  
21 working on shortly, so we have the areas  
22 bounded and if it were by right to any  
23 development pattern within that, (inaudible),  
24 an assortment of all those TDRs and that  
25 opportunity would be lost, so we don't want

1 that to happen. It's going to be a fine line,  
2 and I'm sure you'll have something to say about  
3 that and so will the Commission and I'm sure  
4 we'll end up with something that's

5 MR. HUTCHCRAFT: And that's a reasonable  
6 discussion and I don't debate the merits of  
7 that discussion. I just think that there aren't  
8 assurances in place today, which is when we're  
9 asking to give up these rights.

10 One of the other issues that I think has  
11 to be in place is the appropriate data and  
12 analysis. I think it was clear from my  
13 questioning that I still have a big concern of  
14 the 1953 data and I've talked with Mr. Erwin  
15 afterwards. Again, I think the concept is an  
16 appropriate concept. We ought to look to see  
17 where we can restore and make improvements, but  
18 I gave him an example of, well, what happens if  
19 I have an acre of citrus farm and I want to go  
20 in and put in a packaging planting, a  
21 processing plant or a farmworker housing  
22 facility and I need to submit to the County for  
23 approvals? If you look at policy 1.4.5 it says  
24 I have to meet the historical levels of 1953  
25 and there's no way in the world I can do it.



1           So to the extent that that's a goal we  
2 want to achieve, we need to make sure that  
3 there's sufficient flexibility and even the  
4 County indicated, like I'm not going to say  
5 this is going to be the natural system, we're  
6 going to have to terrace these. Well, when you  
7 look at -- I don't remember the number -- 24,  
8 it says connected natural system and I'm just  
9 concerned about the conflicts when you try to  
10 adopt that map to those levels. So if what  
11 we're really trying to do is to restore back to  
12 that level, let's add the language that  
13 encourages you to do that in the appropriate  
14 locations, rather than establish that historic  
15 flow system as the method of trying to  
16 reestablish, because I don't think cart blanche  
17 you can do it.

18           The next item is the tier system and this  
19 is probably my own paranoia, but I think -- and  
20 Ron had indicated kind of a similar concern  
21 that when you look at the tier map and the  
22 acquisition map and Map 14, I think there are  
23 regulations and in the best management programs  
24 that are recommended in natural resources, I  
25 think that there's a potential that you erode

1 rights that were not intended to be eroded, so  
2 I think that there's the potential for  
3 unintended results by the duplication of those  
4 layers.

5 Another issue where I clearly don't have  
6 enough information to take a position on, I  
7 think it's 1.7.1.12, I still have a concern  
8 that those locations were selected not from a  
9 resource basis, but from a planning basis and I  
10 wouldn't tell you that that that's not the  
11 County's right. I just think that, gosh, we  
12 ought to have a map that shows where are the  
13 natural resources and I have not seen a map  
14 that says where the mining is, here's where the  
15 natural resources are, because there are rights  
16 that are being precluded -- and again, going  
17 back to the TDR, I don't know that that  
18 provides an appropriate mechanism to address  
19 it.

20 So for those reasons, you know, I applaud  
21 the work that's been going on. I encourage,  
22 you know, continual refinement, but I'm not  
23 going to be able to support going forward today  
24 because I think those items still need to be  
25 addressed in more detail.

1 THE CHAIRMAN: Any further comments?

2 MS. JOHNSON: I think an enormous amount  
3 of work has been done on this by both the  
4 consultants and Staff for quite sometime, and I  
5 basically concur with the Staff recommendations  
6 as we finally, after much discussion, have  
7 gotten to some point of conclusion about them.

8 I have a couple of concerns. I think  
9 that in the brutal conversation, Staff  
10 indicated that the 1953 map that was not  
11 regulatory, but was simply informational, it  
12 doesn't say that and I think it should say that  
13 in the document to help clarify some of the  
14 points that were just brought up.

15 It's interesting, I interpret the tier  
16 issue in a slightly different way because it is  
17 not clear. Again, the text, at least not that  
18 I found, that one tier takes priority over the  
19 other. Conceivably it allows some flexibility  
20 for a case-by-case interpretation. I don't know  
21 if that is that a -- how does that strike Staff  
22 as an interpretation of the tiers?

23 MR. O'CONNOR: I think that's -- I think  
24 that's a correct way to look at it. I mean, it  
25 does show the priorities, but it's also going

1 to be based on opportunities too and, you know,  
2 what comes available to us and when.

3 MS. JOHNSON: And so if that's the case,  
4 I don't know if the language can be so adjusted  
5 to indicate that that's what you mean.

6 My only remaining -- I'm not terribly  
7 concerned about the level of service issues on  
8 State Road 82 because I do think there are  
9 opportunities to look at exemptions for that  
10 and, you know, that's something that I think  
11 works its way out, but I am concerned about the  
12 many, many questions associated with TDRs.  
13 I love the concept, I think it's really great.  
14 I think there are a lot of things that are not  
15 yet sorted out that I think that the commercial  
16 and industrial uses are one option aside from  
17 residential, especially since that's one thing  
18 that we say we're interested in, in the Lehigh  
19 area, and I'm wondering what Staff's suggestion  
20 would be in terms of the motion that's before  
21 us today.

22 Now, I heard Bill say that the details  
23 pertaining to the TDRs will be worked out in  
24 the LDC, so where are we if we vote on this  
25 motion as it is today in terms of voting

1 conceptually for the TDRs, but not having all  
2 that details in place?

3 MR. O'CONNOR: Well, that's exactly where  
4 you'd be. I mean, you don't have those details  
5 in place and --

6 MS. JOHNSON: But after the dust settles,  
7 what does that mean for somebody who takes a  
8 look at the comp plan and the LDC a ways down  
9 the road?

10 MR. O'CONNOR: Well, I mean, part of the  
11 contract is for those land development  
12 regulations to be generated by the consultant.  
13 This still has to go to the Board of County  
14 Commissioners in September and then it goes to  
15 the DCA and then it's reviewed and then it  
16 comes back and then there's two months for us  
17 to adopt it, so we can have the TDR regulations  
18 flushed out pretty well by that time, I  
19 believe. I don't know that they'll be the same  
20 day, but I think the timing should be well --

21 MR. SPAKOWSKI: Our intention is to work  
22 on the regulations starting immediately. The  
23 safe thing is to wait (inaudible), because we  
24 don't want to take a safe route, but we don't  
25 want there to be a gap. We cannot adopt the

1 regulations until the comp plan is adopted, but  
2 that doesn't mean we couldn't adopt them the  
3 same night. Our goal would be as close to  
4 simultaneous as we can.

5 MS. JOHNSON: Okay, that's all I have.

6 MS. CALL: I'm willing to amend my motion  
7 to address those concerns, a second approved?

8 THE CHAIRMAN: Second approves.

9 MS. BUTLER: Bill, some suggestions about  
10 policy 1.4.1.2, clarifying the issue, Bill had  
11 made some suggestions about a policy clarifying  
12 the issue, would that be included in your  
13 motion?

14 MS. CALL: I don't like the words more  
15 lenient, but let me -- so I'm not including  
16 that in my motion.

17 MS. JOHNSON: Yeah, I understand that you  
18 moved using the Staff recommendations.

19 MS. CALL: I'm using the Staff's  
20 recommendations.

21 THE CHAIRMAN: I need -- I think I'm not  
22 sure how the process is going to work here, but  
23 we've heard a lot of things here today that  
24 needed more work and we heard Staff say it and  
25 we heard the consultants say that these areas

1 need more work and we can work on that to fine  
2 tune them and this is such a big issue for the  
3 County that I am reluctant to vote for this  
4 motion to move it forward at this time because  
5 we still have another month's meeting before we  
6 have to get it to the Commissioners because  
7 they need to act on it in September, at their  
8 September meeting, so we meet again in August,  
9 so is there not still an opportunity for us to  
10 have another meeting on this issue?

11 MR. O'CONNOR: Well, I think certainly  
12 that's -- that's a possibility. I mean, here  
13 we are, we've got quite a long day today, we  
14 still haven't resolved the coastal-rural issue;  
15 that's going to be back in front of us. We  
16 have how many --

17 MR. NOBLE: We have two utility  
18 amendments, we have the conservation lands  
19 amendment, we have approximately one other  
20 amendment we'll make in this cycle as well.

21 THE CHAIRMAN: And I feel uncomfortable  
22 with the -- I really want this TDR program to  
23 be successful and I really would like to see us  
24 put together a plan and I think if we put our  
25 heads together, we can do that. I don't think

1 we've done that yet, and so I think we're  
2 rushing here to judgment on this issue and so  
3 therefore I cannot support the motion at this  
4 time. Without any further comments, I'm going  
5 to -- all in favor of the motion?

6 PROSPECTIVE JURY PANEL: Aye.

7 THE CHAIRMAN: Opposed? Aye.

8 MR. INGE: Abstain.

9 MS. JOHNSON: What was the vote? I can't  
10 tell.

11 THE CHAIRMAN: 4-2.

12 MR. O'CONNOR: 4-2.

13 THE CHAIRMAN: Is there any other  
14 business? Okay, not hearing any, the meeting  
15 is adjourned.

16 (Whereupon, meeting adjourned at 5:30 p.m.)  
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# THE COLINAS GROUP, INC.

ENGINEERING AND ENVIRONMENTAL CONSULTANTS

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October 27, 2009

Holland & Knight  
200 South Orange Avenue Suite 2600  
Orlando, FL, 32801

Attention: Mr. Roger Sims

Re: Key Issues Concerning  
Comprehensive Hydrological Study of the Lee County Southeastern Density Reduction /  
Groundwater Resource (DR/GR) Area  
Final Report of the MIKE SHE Model Development and Results  
DHI Water & Environment, Inc., September 10, 2009  
and Chapter 4 Groundwater Modeling of Innovative Mining Concepts  
Natural Resource Strategies for Southeast Lee County  
(prepared by Dover, Kohl & Partners, dated July 2009)

Dear Mr. Sims;

**Key Issues Concerning  
Comprehensive Hydrological Study of the Lee County Southeastern Density Reduction /  
Groundwater Resource (DR/GR) Area  
Final Report of the MIKE SHE Model Development and Results  
DHI Water & Environment, Inc., September 10, 2009**

I have reviewed the Comprehensive Hydrological Study of the Lee County Southeastern Density Reduction/Groundwater Resource (DR/GR) Area, Final Report of the MIKE SHE Model Development and Results (herein referred to as "the study"), prepared for Lee County - Division of Natural Resources, by DHI Water & Environment, Inc., September 10, 2009. Based on that review, I have identified the following issues with the study.

1. It is my professional opinion, as a Florida licensed Professional Geologist and a Florida licensed Professional Engineer, that the Hydrological Study involves the study of geology and engineering. According to the Florida Department of Business and Professional Regulation, DHI Water & Environment, Inc., does not have a Certificate of Authorization from the Florida Board of Professional Engineers nor the Florida Board of Professional Geologists. Additionally, the Hydrology Study was not signed and sealed, as required by F.S., by either a Professional Geologist or a Professional Engineer.

According to Florida Statutes: 492.102, F.S. *Definitions.--For the purposes of this chapter, unless the context clearly requires otherwise:*

(7) *"Practice of professional geology" means the performance of, or offer to*

Cemex Ex B

*perform, geological services, including, but not limited to, consultation, investigation, evaluation, planning, and geologic mapping, but not including mapping as prescribed in chapter 472, relating to geological work, except as specifically exempted by this chapter. Any person who practices any specialty branch of the profession of geology, or who by verbal claim, sign, advertisement, letterhead, card, or any other means represents herself or himself to be a professional geologist, or who through the use of some title implies that she or he is a professional geologist or that she or he is licensed under this chapter, or who holds herself or himself out as able to perform or does perform any geological services or work recognized as professional geology, shall be construed to be engaged in the practice of professional geology.*

*According to 61G15-23.002, F.A.C., A professional engineer shall sign by hand the licensee's handwritten signature (facsimiles are not acceptable) and affix the licensee's seal: (a) To all final drawings, specifications, plans, reports, or documents prepared or issued by the licensee and being filed for public record;...*  
The Hydrology Study was filed for public record and was not signed and sealed.

2. The study describes the results of a comprehensive hydrologic model developed to simulate hydrologic and hydraulic conditions for several land use options. The study states a goal of the model is to provide Lee County with a valuable planning tool and to generate results that may serve as input for site-specific models for evaluating permit applications.

Due to the comprehensive nature of the model, range of assumptions necessary to develop a comprehensive model, the variability of the range of input parameters, and the intended use of the model, it is my professional opinion that the study should undergo an extensive and thorough peer review. The peer review panel should include experts in the hydrogeology, civil engineering, hydrology, mining, land use, statistics, and modeling.

3. A model input included wellfield pumping, however, the pumping rates were held constant over the modeled time period. The DHI model is a transient model but this condition would assume that Lee County would experience no growth and no additional water supply demand over the modeled time frame. The study also states that pumping rates are an area of uncertainty in the model. Wellfield pumping can cause significant reductions in water levels. Drawdown can be of a magnitude, both laterally and vertically, that water levels are remarkably impacted in the surficial aquifer, wetlands and surface water bodies. Thus, hydroperiods, as defined in the study, would also be remarkably impacted. Because the impact can be significant, the pumping rates and locations expected during the Future Conditions Model should be verified and documented with the Lee County Utilities Department.

4. The study states that LIDAR imaging was used as input for the topography used in the model. Topography produced from LIDAR can range in accuracy from 30 to 1000 millimeters. Page 85 of the study reports that the wetlands hydroperiod is defined as when water in the model is at least 1 millimeter above the topographic surface. The definition of a hydroperiod used in the model is outside the range of LIDAR accuracy and, therefore, is not a valid definition.
5. The study reports that the model grid size is 750 feet by 750 feet. The study also notes that *“Note that even with the proposed improvements listed above, the model has limitations related to the grid cell size (750 ft). For local studies that require a higher resolution, the construction of a new model with a smaller model domain area and grid cell size is recommended.”* A 750-foot square discretization is gross, as noted by the study, and calls into question how input used in the model (such as culverts, roadways, berms, canals, narrow channels, wells, and outfall structures) impact the model results. These features are significantly smaller than 750 feet and will impact on the model results. Due to the presence of significant features of this type in the DR/GR under Existing Current Model, the modeling results cannot be taken as specific or reliable for any land use control purposes.
6. The study states that *“The hydroperiod data developed by KLECE is based on the vegetation communities, which have been mapped from GIS data and aerial photographs taken in 2007. This hydroperiod map was generated based on the estimated relationships among vegetation, hydroperiod, and water depth conditions. These are shown in the legend on Figure 35. According to KLECE, the estimated water depths and hydroperiods are typical ranges of conditions for unaltered wetland systems in southwest Florida (KLECE 2008). These relationships have not been compared with measured water level data, though. Thus, a quantitative or direct comparison between this hydroperiod map and the one produced by the model is not appropriate.”* Thus, the hydroperiod maps generated by KLECE for 1953 and 2007 represent **estimated water depth conditions**. No measured water levels were used by KLECE nor the modeler to verify the hydroperiod data, only estimated water levels were used. Yet the hydroperiod maps produced by KLECE were used as a basis of evaluation of the model results. The study states *“As such, hydroperiod maps developed by KLECE corresponding to years 1953 and 2007 were used to evaluate how the present developments in the DR/GR Area have affected the water resources, and to evaluate at what extent the model predictions for the future conditions scenarios are going to impact them in the direction of the historical conditions.”* The use of the estimated hydroperiods (estimated general ranges of water depths) in interpreting the model results is unreliable for purposes of supporting goals policies and objectives of the DR/GR comprehensive plan amendments. This aspect of the modeling must be revisited and refined by the use of more accurate, field verified data.
7. The study states that *“The model also predicts that the drainage system around some mines*

*produces a positive net surface water outflow from the mines.*", yet no data was obtained from the mines to verify that surface water outflows from the mines. The study states that *"The drainage system around the mining pits is based on LIDAR data elevations and other model assumptions."* As discussed earlier, the accuracy of LIDAR calls into question the accuracy of the model prediction. In a contradictory statement on Page 56 of the study, the modeler states that *"Separated flow areas were also defined for the mining pits to represent the surrounding berms. This approach assumes that there is no overland flow between the mine and surrounding properties."*

Each mine is required to obtain an Environmental Resource Permit (ERP) from the Florida Department of Environmental Protection (Department) to construct a surface water management system. The ERP rules regulate how stormwater is handled in mines and evaluates potential hydrologic impacts of the mine to the surrounding area. Additionally, if the mine discharges off site, an Industrial Wastewater Facility Permit must be obtained from the Department and discharge must be reported on a monthly basis. The modeler did not confirm whether mines have permits to discharge off site and the discharge rates. No confirmation of *positive net surface water outflows from the mines* appears to have been attempted. Yet, the conclusion stated in the study is that *"As a result, the aquifers need to supply water to the mining pits (negative net groundwater recharge) in about the amount that is lost through the drainage system."* The conclusion is not validated or supported through readily available data.

8. Page 112 of the study leads to the conclusion that mine pits change the water table configuration. The study states *"The model predicts that the mine flattens the water table commonly causing a decrease in groundwater levels up gradient with respect to the pre-mining conditions. Down gradient of the mining pits, this effect may produce either an increase or a decrease in groundwater levels, depending on the local hydrologic conditions, the time of the year, etc. These effects in the upstream and downstream areas are more pronounced in the model in areas with steeper topographic slopes and for larger area mine footprints."* The model also includes Figure 71, reproduced below, that shows the flattening of the water table with the following notes.

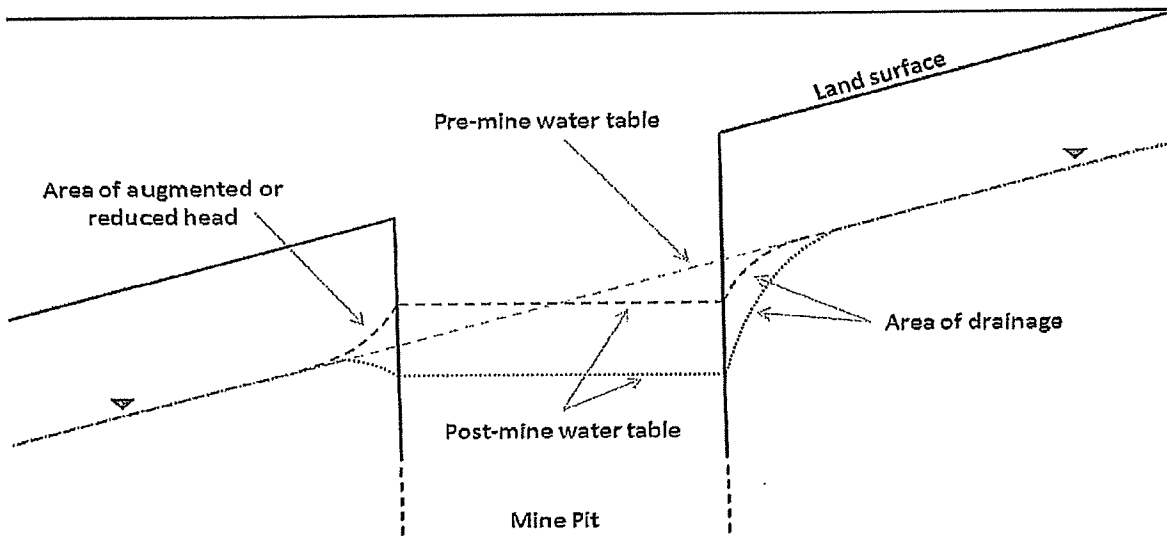


Figure 71. Sketch of the flattening effect on the water table elevation of a mining pit in the presence of a regional gradient.

*“Notes:*

- *Vertical scale exaggerated*
- *Blue dashed line and orange dotted line represent different possible water table conditions*
- *No field data exists to quantify the “near pit” impacts “*

The study fails to note that the overall hydraulic gradient across the model regime does not vary significantly from the Existing Conditions Model to any of the four Future Conditions Models. The flattening of the water table is a localized condition existing in the vicinity of the mine lake, as occurs with any natural or manmade lake. As shown on Figure 71 above, outside of the immediate vicinity of the mine pit, the water table gradient does not change, therefore, the overall availability and storage of ground water is not negatively impacted.

The notes reproduced above also state that the scale of Figure 71 is exaggerated, meaning that the figure exaggerates the extent and magnitude of the flattened water table. The notes also state that blue and orange lines represent **possible** water table conditions. The scale exaggeration and possible water table configurations presented, misrepresent the model results.

The notes reproduced above also state that *“No field data exists to quantify the “near pit” impacts.”* Several of the mines in Lee County are required to monitor ground water and surface water levels, yet no attempt to secure the data or use it in the evaluations appears to have been made. The data should be used to validate the model results.

9. Four Future Conditions Models (FCM) were developed for the study. The Future Conditions Models utilized the following assumptions:
- a) *"The monthly groundwater withdrawal rates of the most recent year of available groundwater withdrawal data were repeated for every year in the FCM simulation period (2002-2007). In some cases, the 2007 withdrawal rates were used if available, but in others the 2006 rates were used. The same groundwater withdrawal rates for public water supply were used for the four future conditions scenarios. The domestic self supply rates vary according to land use changes."*  
*"The well field configuration of the ECM remained the same in the FCMs, i.e., no wells were added or removed. The ground-water withdrawal rates for public water supply in the last year of available data were repeated for every year in the simulation period for the four future conditions scenarios."*

The assumption, used as input to the model and previously discussed, does not allow the evaluation of future public supply groundwater withdrawals on the storage and availability of water resources. A worst case analysis assuming maximum permitted withdrawals under severe drought conditions should be included for comparison purposes

- b) *FCM1 input mining limited to already-approved mining pits plus some new pits north of Alico Road near the airport. A broad westerly flow way to Corkscrew Swamp would be restored southward from the Imperial Marsh.*

*FCM2 input mining limited to already-approved pits plus a major expansion to the Green Meadows Mine. A broad flow way to Corkscrew Swamp would be restored southward from the east end of Corkscrew Road in Lee County.*

*FCM3 input mining limited to already-approved pits plus proposed new pits that were in the application process in September 2007, including pits along Corkscrew Road east of the Flint Pen Strand. Both flow ways to Corkscrew Swamp would be restored to whatever extent is still possible after significant portions of each were mined.*

*FCM4 input mining limited to already-approved pits plus a moderate expansion to the Green Meadows Mine. Both flow ways to Corkscrew Swamp would be restored in full.*

These assumptions input in the model focus on mining with some evaluation of Corkscrew Swamp restoration. The selection of the FCM scenarios appears to be strongly biased in view of the fact that the study states *"This study evaluates the effects of land use changes (e.g., urban, agricultural, wetlands, mining, etc.) on the storage and availability of water resources in the area."* However, mining was the only variable tested by the four scenarios,

suggesting that other land uses have no hydrologic impacts. This is an unrealistic approach which is highly prejudicial to mining interests in Lee County.

- c) The new urban areas added in the future conditions land use map were exactly the same in all four alternatives.

The use of constant urban areas as input to the model, rather than evaluating various urban area concepts indicates that the FCM scenarios are strongly biased in view of the fact that the study states "*This study evaluates the effects of land use changes (e.g., urban, agricultural, wetlands, mining, etc.) on the storage and availability of water resources in the area.*"

In conclusion, it is my professional opinion that significant issues exist with the study, model input, model assumptions, results, and conclusions. The study needs undergo comprehensive peer reviewed by panel of unbiased professionals before it is used in decision making by Lee County.

**Review of Chapter 4  
Groundwater Modeling of Innovative Mining Concepts  
Natural Resource Strategies for Southeast Lee County  
(Prepared by Dover, Kohl & Partners, Dated July 2009)**

I have reviewed Chapter 4, Groundwater Modeling of Innovative Mining Concepts, Natural Resource Strategies for Southeast Lee County, prepared by Dover, Kohl & Partners, Dated July 2009 (herein referred to as "Chapter 4"). Based on that review, I have identified the following issues with the study. The issues are identified following a reiteration of the applicable section of the Chapter (*in italics*).

**Overall Issues:**

1. Chapter 4 appears to be issued as a final report. Because the report involves the practice of geology and/or engineering, the report should be signed and sealed by the professional geologist or professional engineer.
2. Was Chapter 4 issued in draft for peer review before being finalized?

**Page 4.3. Stated Purpose:**

*to investigate and assess the hydrological value of innovative mining concepts and mine lake configurations that have been suggested to help minimize the effects of mining operations on groundwater levels in the Density Reduction/Groundwater Resource (DR/GR) area of Lee County.*

1. The innovative mining concepts involving installation of slurry walls around or through mine lakes are not reasonable nor practical in the geologic environment of Lee County.
2. The study starts with the assumption that mining operations effect ground water levels. An unbiased scientific study should prove or disprove this assumption.

Holland & Knight

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Page 8

Page 4.3 Paragraph 2

*As part of this study, SDI created a MODFLOW groundwater model utilizing and incorporating parameters and data from an existing MIKE SHE model (DHI Water & Environment, Inc., Draft, 2009) of the DR/GR area as well as data from previous models of the area and reference literature.*

1. The draft report had not been issued so how was the data obtained from the DHI study?
2. There is no documentation that the DHI study had been peer reviewed.

Page 4.3 Paragraph 4

*The DKP project team identified the existing Florida Rock Mine property as a representative mining area within the DR/GR for this investigation.*

1. No data was presented to support the premise that the Florida Rock Mine property is a representative mining area.

Page 4.3 Paragraph 4

*The proposed study mine lake was originally defined as a 55-acre mine lake simulated as a rectangular area 1,600 feet by 1,500 feet located approximately in the middle of the Florida Rock Mine property. However, initial model evaluations indicated that a small mine lake might not be adequate to illustrate potential water level changes that might result from the innovative mining concepts. Therefore, SDI arbitrarily increased the size of the proposed mine lake to a rectangular area 3,500 feet by 6,175 feet encompassing approximately 500 acres.*

1. An unbiased, scientific study would present the initial model evaluations and results. Rather than dismissing those results, the results should be provided. It is my professional opinion that the small lake might would be adequate to show realistic effects of mine lakes on the water table.
2. Did the 55-acre mine lake show any ground water level impacts or not?
3. The small lake did not support the assumption presented in paragraph 1 so the lake size was increased by a factor of nine, based on what assumptions? I am not aware of any active mine lake in Lee County that is 500 acres in size.

Page 4.3 Paragraph 4

*To accomplish this, an existing mine lake south of the proposed mine lake was moved southward to allow simulation of the larger mine lake. Another smaller existing mine lake was moved eastward to allow simulation of the larger proposed mine lake.*

1. These are arbitrary alignments and orientations of mine lakes. If different alignments, sizes and orientations were used, I would anticipate significantly different results.

Page 4.5 Groundwater Flow Model Construction

Paragraph 3

*The groundwater flow model is comprised of two layers simulating the WTA. Layer 1 represents the undifferentiated sediments of Holocene to Pleistocene age that occur at land surface in the area and overlay the Tamiami Formation. Layer 2 simulates the Ochopee Limestone of the Pliocene age*



*Tamiami Formation. The lateral extents of the Ochopee Limestone were modified to agree with a previous investigation (Water Resource Solutions, Inc., 2005).*

Paragraph 4

*Hydraulic Parameters*

*SDI was provided with a set of electronic MODFLOW files extracted from the MIKE SHE groundwater model by DHI at the request of DKP. DHI had previously extracted a MODFLOW model set-up and parameters from the saturated portion of MIKE SHE. Hydraulic conductivity for layer 1 of the SDI DR/GR model was the same as used in the DHI model. Hydraulic conductivity for layer 2 in the SDI DR/GR model was revised from the DHI values in portions of the DR/GR area based on a review of aquifer performance test data and hydraulic conductivities in several earlier models of the area (Montgomery, Inc., 1988; Water Resource Solutions, Inc., Groundwater Flow Model Construction 2005; and Rawl and Voorhees, Draft, 2005).*

1. Some parameters and data from the DHI study were incorporated into the SDI model, while other parameters and data were not. No justification was provided on this decision. Were the parameters used by DHI incorrect?

Page 4.5 Boundary Conditions

*Topography for the MODFLOW 2000 model was imported using the USGS National Elevation Dataset with a consistent projection (Geographic), resolution (1 arc second), and elevation. The vertical datum is measured in feet relative to NAVD88. Topography for the area of the Florida Rock Mine property was imported using a LIDAR topographic dataset with a fundamental vertical resolution of 0.6 foot.*

1. The vertical datum for the LIDAR data is not identified. If the datum is not NAVD 88, there can be significant elevation differences between the elevations in the USGS National Elevation Dataset and the Florida Rock Mine property data set.

Page 4.5 Boundary Conditions

*Water levels in the GHBs were set as a subdued replica of topography. Water levels in the northernmost Florida Rock mine lake and the southernmost lake were arbitrarily set at fixed levels using constant head boundary conditions to impose a fixed groundwater gradient in order to evaluate the selected innovative mining concepts uniformly under a controlled set of boundary conditions.*

1. The study should have conducted a sensitivity study to evaluate the effects of various constant head boundaries on the model results. The modeling results are highly influenced by the water levels assigned to the constant head boundaries.

Page 4.5 Boundary Conditions Paragraph 2

*A rainfall rate of 49.36 inches/year was calculated using the average annual rainfall for Lee County for the period 1999 through 2008 from the Lee County rainfall online database.*

1. The 1999 through 2008 period of record was marked by below normal rainfall, based on

rainfall data obtained by NOAA. NOAA stations report an average rainfall of in excess of 53 inches per year based on a 1914 through 2008 period of record. It is my opinion that the use of the lesser rainfall amount would cause water levels to appear lower in the transient model, thereby showing additional water level impacts.

#### Page 4.6 Model Parameter Adjustments

*Selected model parameters were adjusted to ensure that the model could replicate the shallow regional flow system, groundwater flow direction, and representative groundwater gradients. The uniform groundwater recharge and ET rates were adjusted to produce groundwater levels and depths to groundwater appropriate for the area. A uniform groundwater recharge rate of 18 inches/year and a uniform maximum groundwater ET rate of 26 inches/year were applied throughout the model except for simulated mine lakes. Mine lakes were simulated using high hydraulic conductivities, with the average Lee County rainfall rate and Everglades open water evaporation rate applied to the mine lake areas.*

1. The Everglades open water evaporation rate exceeds the rainfall rate used in the model. It is my opinion that this assumption immediately results in a decreasing ground water levels in a steady state model, thereby showing additional ground water level impacts.
2. As stated, *recharge and ET were adjusted to produce ground water levels and depths appropriate for the area.* What was considered to be appropriate ground water levels for the area and what data was used to make that determination?

#### Page 4.6 Model Parameter Adjustments

*Groundwater levels in the water table are generally a subdued reflection of the topography of the area. Simulated depths to the water table from land surface range from approximately 1 foot above ground in the Corkscrew Swamp area to 5 feet below ground in an area of higher topography along the eastern boundary of Lee County. Depths to water over most of the model area range from 1.5 to 2.5 feet below land surface.*

1. Why were the ground water level data presented in the DHI report not used for this study rather than an approximation of water levels using topography?

#### Page 4.8 Paragraph 1

*This unintended movement of groundwater may have undesirable effects on WTA water levels and nearby wetlands.*

1. No information is presented to support this broad conclusion. Under what conditions may the undesirable effects occur?

#### Page 4.8 Paragraph 2

*Simulations evaluated the potential groundwater level changes due to proposed mine lake size using the location of native aquifer terraces and various engineered slurry walls to separate a single proposed mine lake into multiple proposed mine lakes.*

1. It is my professional opinion that the use of slurry walls in mine lakes in the geologic setting

of Lee County is neither feasible nor practical. Therefore, these "innovative" mining concepts are unrealistic.

Page 4.8 Paragraph 3

*For the baseline case, water levels were fixed in two of the existing mine lakes to establish a larger hydraulic gradient in the area of the proposed mine lake (see Figure 4.2). A fixed water level of 25 feet NAVD88 was set in the existing northern mine lake and a fixed water level of 21 feet NAVD88 was set in the existing southern mine lake that was moved approximately 4,000 feet to the south. Groundwater is simulated to flow from the north-northeast to the south-southwest across the focus area. Groundwater would decline approximately 2.5 feet, with a larger hydraulic gradient expected in the southern portion of the focus area than in the northern portion. All changes in water levels for the various scenarios are based upon the difference between water levels in this baseline simulation and each of the scenarios.*

1. It is my opinion that establishing "a larger hydraulic gradient" exaggerates any water table fluctuations shown by the model and are not, therefore, scientifically supportable. The use of actual hydraulic gradients would model actual conditions.

Page 4.1 Scenario 1 Results

*Scenario 1 was used to evaluate the effects of the proposed 500-acre mine lake on the groundwater levels and hydraulic gradient in the vicinity of the proposed mine lake.*

1. The particular lake orientation chosen for the model would be expected to show the greatest impact on ground water levels. An unbiased, scientific study would examine other lake orientations, such as the major axis parallel to the ground water flow direction.

Page 4.16 Ranking of Scenarios Evaluated

*An additional evaluation criterion was made using the area adjacent to the proposed mine lake where the simulated water level changes exceeded 0.25 feet of water level decline. The 0.25-foot water level decline criterion was developed in conjunction with other members of the DKP project team. The 0.25-foot decline is considered a reasonable indicator of non-cumulative potential impact, and its use herein is not intended to imply any water level declines less than 0.25 feet may be acceptable. That decision is a regulatory decision, which is outside the scope of this study.*

1. The selection of a 0.25-foot decline as an evaluation criteria is meaningless, considering unrealistic input was used in the model, such as utilizing a larger hydraulic gradient than actually exists.

Page 4.24 Summary of Findings

First Bullet

*Innovative mining concepts could be beneficial in mitigating groundwater level changes caused by mine lakes; however, the simulations conducted indicate a need to assess the concepts on a case-by-case basis. The extent and magnitude of groundwater level changes caused by proposed mine lakes are dependent upon (1) the existing pre-mine groundwater gradient, (2) the size and shape of the*

*proposed mine lake, (3) the orientation of the proposed mine lake relative to the local groundwater gradient, and (4) the size and proximity of surrounding water bodies.*

1. The bullet implies that the modeling is not useful for specific mine plans and that there is a need to evaluate each case individually on its own merits. The bullet also implies that the gradient, mine lake size, shape and orientation, and other conditions will affect the results. Based on these statements, the study appears to have no practical value.

#### Page 4.24 Last Paragraph

*Innovative mining concepts may be beneficial in reducing groundwater level changes caused by proposed mine lakes; however, their use may have unintended consequences unless these concepts are carefully designed for each individual proposed mine lake and its unique surroundings. Proper design may allow groundwater levels to be maintained or even increased in a particular area of interest, such as a nearby wetland. None of the innovative mining concepts evaluated preclude the occurrence of lower water levels in some portions of the surrounding environment. SDI believes that the use of a site-specific groundwater flow model would be required to properly evaluate the design and placement of any innovative mining concepts. However, a site-specific groundwater flow model would not likely be the preferable tool to address the issue of regional cumulative impacts nor any transient changes due to climatic or pumping variations.*

1. The study has not shown that there are any reduced ground water level changes caused by mine lakes because the input data, in particular the hydraulic gradient, is not realistic. Again, SDI states that site-specific modeling would be necessary to conduct a proper evaluation. Based on this statement, it is my professional opinion that the modeling effort serves no practical purpose and cannot be used to evaluate mining impacts, if any, on ground water levels.

#### Additional Opinions

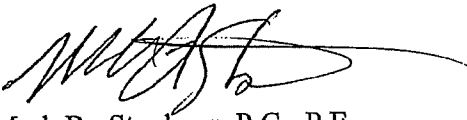
1. The Lee Plan: Additional Groundwater Protection Provisions, Goal 63 is to protect the county's groundwater supplies from those activities having the potential for depleting or degrading those supplies. Neither of these studies provides scientifically supportable information to achieve Goal 63.
2. Mr. Kevin Erwin stated, at the October 26, 2009 Workshop held by the Lee County Board of County Commissioners, that based on his evaluation of hydroperiods (hydropatterns) there has been a 40 percent wetland loss between 1953 and 2007 that was mostly due to conversion of land to agriculture through drainage. He also stated his analyses were used as input to the DHI model. However, the modeling studies focused on mining so there is an obvious disconnect between the findings of Mr. Erwin and the modeling studies in trying to achieve the goals of the Lee Plan.

Holland & Knight  
October 27, 2009  
Page 13

\* \* \* \*

Thank you for the opportunity to submit this report. If you have any questions concerning the comments provided herein, please call.

Yours very truly,  
**THE COLINAS GROUP, INC.**  
ENGINEERING AND ENVIRONMENTAL CONSULTANTS

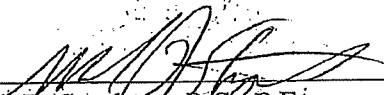


Mark R. Stephens, P.G., P.E.  
Principal Consultant

**Key Issues Concerning  
Comprehensive Hydrological Study of the Lee County Southeastern Density Reduction /  
Groundwater Resource (DR/GR) Area  
Final Report of the MIKE SHE Model Development and Results  
DHI Water & Environment, Inc., September 10, 2009  
and Chapter 4 Groundwater Modeling of Innovative Mining Concepts  
Natural Resource Strategies for Southeast Lee County  
(prepared by Dover, Kohl & Partners, dated July 2009)**

**PROFESSIONAL ENGINEER CERTIFICATION**

I, Mark R. Stephens, PE# 36179, certify that I currently hold an active license in the state of Florida and am competent through education or experience to provide engineering services in the civil engineering discipline contained in this plan, print, specification, or report. I further certify that this plan, print, specification, or report were prepared by me or under my responsible charge as defined in Chapter 61G15-18.001, F.A.C. Moreover, if offered by a corporation, partnership, or through a fictitious name, I certify that the company offering the engineering services, The Colinas Group, Inc., holds an active Certificate of Authorization (No. 7934) to provide the engineering service.

  
\_\_\_\_\_  
Date: 10-27-09  
Mark R. Stephens, P.E., P.E.  
Florida P.E. License No. 36179  
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**MARK R. STEPHENS , P. G. , P. E.  
THE COLINAS GROUP, INC.  
2031 EAST EDGEWOOD DRIVE, SUITE 5  
LAKELAND, FLORIDA 33803**

---

**TITLE: President / Principal Consultant**

**EDUCATION: M.S., Geology/Water Resources, Iowa State University  
B.S., Geology, Iowa State University**

**PROFESSIONAL  
LICENSES: Professional Engineer - Florida  
Professional Geologist - Florida**

**PROFESSIONAL  
EXPERIENCE: 35 Years**

**SELECTED  
EXPERIENCE: WASTE DISPOSAL**

- Design and preparation of permitting documents for brine disposal injection well in Brevard County, Florida
- Wastewater permitting for demineralizer concentrate disposal from reverse osmosis water treatment
- Hydrogeologic evaluations of rapid rate and slow rate effluent disposal systems throughout Florida
- Investigation of ground water quality impacts from industrial landfills in Palm Beach County, Florida and Delaware
- Sanitary landfill siting study in Maryland
- Design of chemical waste disposal facility and process water impoundments for phosphate chemical plants in Polk County, Florida
- Exploration, design, and permitting of injection well systems for wastewater disposal in Key Largo, Florida, Nassau, Bahamas, and Brevard County, Florida
- Consultation to drilling contractor for hydrogeologic testing of an injection well testing program in Brevard County, Florida
- Evaluation of ground water quality impacts from sanitary landfill in Broward County, Florida
- Evaluation and expert testimony for EPA relating to a sanitary landfill in Dade County, Florida
- Sampling and evaluation of hazardous wastes at facilities throughout Florida
- Design, permitting, and construction of chemical process waste improvement in Polk County, Florida
- Evaluation of operation and ground water monitoring data for injection wells in Melbourne, Florida
- Life expectancy study of existing phospho-gypsum storage area

**GROUND WATER QUALITY/CONTAMINATION**

- Design ground water monitoring programs for Clean Closure Equivalency Demonstration
- Assessment of soil, sediment, and ground water contamination from creosote facility
- Design and implement remedial system for construction project in Jacksonville, Florida
- Design, review, implement and monitor remedial action system for fuel- and oil-affected soil and ground water for sites in Pinellas, Duval, Brevard, Dade, Palm Beach, Lee, Broward, Pasco, and Sarasota Counties, Florida
- Conduct remedial alternatives evaluation for arsenic in soil in northwest Florida
- Review of leaded battery disposal facility, ground water cleanup system, and recommendations for improvement - design closure for facility
- Technical coordinator for underground storage tank program for a major utility company in Florida

## **MARK R. STEPHENS , P. G. , P. E.**

- Conduct contamination assessments at over 100 leaking fuel storage facilities in Florida, North Carolina, South Carolina, and the Bahamas
- Bioremediation of fuel-affected soil in Sarasota County and Lee County, Florida
- Investigation of ground water and soil at oil/water separator in Broward and Dade Counties, Florida
- Design and operation of ground water quality monitoring networks for industrial, mining, and chemical facilities
- Investigation of volatile organic contamination and design of cleanup systems in Palm Beach, Florida
- Design and installation of an abatement and cleanup system for ground water contamination at a chemical processing facility in Polk County, Florida
- Evaluation of migration of spill of radioactive water at two nuclear power plants in Florida
- Contamination investigation of volatile organic compounds near Gainesville, Florida
- Salt water intrusion modelling for the determination of safe abstraction rates in Florida, Grand Cayman Island, and the Bahamas
- Investigation of pesticide disposal sites in central Florida and South Carolina

### **GROUND WATER SUPPLY**

- Technical review of wellfield construction and testing in Citrus County, Florida
- Evaluation of quarry dewatering impacts for limestone quarry in Sumter County, Florida.
- Water use permitting for sand mines in Lake and Polk County, Florida
- Ground water supply investigation and aquifer testing in Seminole County, Florida
- Design of several municipal well fields in Florida and the Bahamas
- Investigations of industrial ground water supplies for phosphate mining beneficiation in central Florida
- Ground water supply investigation for coal-fired power plants in Martin, Manatee, and Putnam Counties, Florida
- Ground water resource management evaluation for Walt Disney World
- Design of shaft mine dewatering and water reuse system in Utah
- Ground water resource assessment for military reservation in Colorado
- Assessment of ground water conditions relating to construction of residential developments
- Wellfield rehabilitation testing and design for Mayport Naval Air Station

### **CIVIL ENGINEERING**

- Environmental Resource Permitting and stormwater management design for numerous sand mines, limestone quarries, and industrial facilities in Florida
- Mine design and permitting for limestone quarries in Sumter, Alachua, Collier, Marion, Hernando, Palm Beach and Lee Counties and sand mines in Polk, Lake, and Glades Counties, Florida
- Spill Prevention, Control, and Countermeasures Plans (SPCC Plans) for numerous sand mines, limestone quarries, and industrial facilities in Florida, Georgia, and South Carolina
- Best Management Practices Plans for numerous sand mines, limestone quarries, and industrial facilities in Florida
- Design of environmental monitoring and management programs for numerous sand mines and limestone quarries in Florida
- Stormwater management system design and permitting for industrial facilities including office buildings, paving projects, sand mines and limestone quarries in Florida
- County Conditional Use Permits and Operating Permits for several sand mines, limestone quarries, industrial facilities, and offices in Florida



**MARK R. STEPHENS , P. G. , P. E.**

**PROFESSIONAL  
AFFILIATIONS:**

American Institute of Professional Geologists  
Association of Ground Water Scientists & Engineers  
Florida Engineering Society  
Florida Institute of Consulting Engineers  
Florida Association of Professional Geologists  
Florida Association for Water Quality Control

**REGISTRATIONS:**

Professional Geologist, Florida No. PG-0000506, 1989  
Professional Engineer, Florida No. 36179, 1985  
Certified Professional Geologist No. 5196, 1982

**PUBLICATIONS  
AND PAPERS:**

- Stephens, M.R., 1994, "Modeling Ground Water Contamination at a Chlorinated Spill Site", paper presented at Florida Bar Environmental and Land Use Section, Orlando, Florida, May, 1994
- Stephens, M.R., 1994, "Restoration Insurance & Reimbursement for Petroleum Cleanup", National Institute for Storage Tank Management, Pensacola, Florida, September, 1994
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School, July 1990, January 1991, July 1992

Stephens, Mark, R., "Economic Geology of Florida", Paper presented to Palm Beach County Science Teachers Summer Training Program, June 1990

Stephens, Mark R., "The Role of the Environmental Consultant in Corrective Action Permitting", Treatise on Florida Environmental and Land Use Law, August, 2002.

Stephens, Mark R., "The Role of the Environmental Consultant in Corrective Action Permitting", Treatise on Florida Environmental and Land Use Law, August, 2002.

**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

**DATE:** July 7, 2009

**To:** Board of County Commissioners

**FROM:** 

David M. Owen  
County Attorney

**RE:** Potential Legal Issues Relating to the Proposed Revisions to the  
Comprehensive Plan Based on the Dover Kohl Study, CPA 2008-06

My office has reviewed the proposed Comprehensive Plan Amendments for Southeast Lee County pertaining to planning for the Density Reduction/Groundwater Resource Area prepared by Dover Kohl & Partners. We have identified and are outlining several legal issues that may arise from the currently proposed changes to the Plan:

1. Vision Statement for Southeast Lee County.

The Vision Statement for Southeast Lee County references a restoration of existing farm lands. It is unclear in the text as to who will be responsible for restoring existing farmlands. If it will be the County, what is the funding source for the restoration effort? By what vehicle will this be accomplished? Lee Plan Policy 158.6.1 requires that the County assess the financial impact of new regulations on the local economy before adopting new regulations that will potentially impose new costs to taxpayers. What is the estimated cost/economic impact to the farm lands property owners for implementing restoration as envisioned by the proposed text?

Agricultural activities are typically not subject to local permitting. If existing farming operations will be required to alter a property's configuration such that less area is available for existing agricultural pursuits, the requirement may likely expose the County to potential liability under the Bert J. Harris Private Property Protection Act (Bert J. Harris Act) or to claims of taking by inverse condemnation.

2. Future Land Use Policy 1.2.2., Tradeport.

The proposed text stating that limerock mining may be approved through planned developments within the Tradeport Future Land Use category may be problematic. It creates an inconsistency within the Lee Plan. Mining is not similar to the character of development anticipated within the Tradeport category. The Lee Plan authorizes uses characterized as employment centers consisting primarily of commerce, light industrial, research, and lodging in this category. The conversion of Tradeport classified properties to mining use is not consistent with the objective of the Tradeport Future Land Use category, which is to expand the County's

Cemex Ex C

RE: Potential Legal Issues Relating to the Proposed Revisions to the  
Comprehensive Plan Based on the Dover Kohl Study, CPA 2008-06

employment base and provide support to the Airport. Development within the Tradeport classification is encouraged to include a mixture of land uses that are described in Policy 1.2.2.

The County added more than 1,400 acres to the Tradeport category south of the Airport in 1994 to ensure adequate land would be available to promote the expansion of the County's employment base. (*See Lee Plan Policy 2.4.4.*) The loss of those nearly 1,400 acres of Tradeport classified lands to mining activities is not proposed for recoupment elsewhere. Lee Plan Policy 158.3.5 requires the County to ensure that adequate land is allocated in the Lee Plan to meet future commercial, industrial, agricultural, and residential needs of its residents. In order to be consistent with the Economic Element of the Lee Plan, the proposed plan amendment will need to address the potential loss of approximately 1,400 acres of land to mining activities that are currently classified for Tradeport uses.

3. Policy 1.4.5. and Policy 1.7.14.

The proposed revisions to these policies state that land use in the DR/GR must be compatible with maintaining surface and ground water at historic levels, now identified as the depths and hydroperiods based on the Kevin Erwin analysis of 1953 conditions. To the extent 1953 conditions no longer exist, the use of the word "*maintaining*" in the first sentence of the policy creates an impression that existing surface and groundwater levels may not be degraded. However, the reference to the 1953 conditions later in the policy implies an affirmative obligation to "restore" existing conditions rather than simply maintain them.

The obligation to restore is confirmed by the proposed additions to the text of Policy 1.7.14., which states in the Erwin Report and detailed analysis of 1953 aerials that they *will be the basis for determining compliance with Policy 1.4.5.* It is clear that the expectation is that new development must restore surface and groundwater depth and hydroperiods to 1953 conditions.

If restoration to 1953 conditions is the intended result, then there is a legal issue with regard to how the restoration of water depths and hydroperiods will affect upstream and downstream property owners. Other property owners may likely be impacted if existing development approvals or farming operations were designed based on existing conditions.

If the restoration of historical flows impacts upstream and downstream property owners, this impact may likely subject the County to liability under a possible claim of inverse condemnation. Recent case law from the Florida First District Court of Appeals advises that alteration of existing water flow patterns creates liability on the local government, *even if the changes in water patterns are to restore historic conditions*, if the alterations of the existing conditions result in negative impacts to other property owners. (*See also Policy 30.1.3., which reiterates the requirement to restore depths and hydroperiods to 1953 levels.*)

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July 7, 2009  
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Comprehensive Plan Based on the Dover Kohl Study, CPA 2008-06

It is also unclear who will perform the restoration on agricultural properties currently in operation on the date of the proposed Plan amendment. Is the restoration requirement applicable only to new Agricultural operations, or is it intended to apply to existing operations as well? If the restoration of flows, etc., impact areas that could otherwise be placed into active agricultural use, will this adversely impact the "right-to-farm" as protected by Florida Statutes? Typically, agricultural operations are not subject to the local development permitting process. There is a question as to how the restoration requirement to be implemented. It is not clear who will be responsible for performing the restoration referenced in connection with agricultural properties.

4. Policy 1.4.5.2.c. - Density Reduction Groundwater Resource Policy

Proposed language in subsection c, may expose the County to liability under the Bert J. Harris Act. Existing mines are not subject to the extinguishment of residential density for lake areas mined. The application of the proposed language to existing mining operations will result in a loss of development expectations that exist today. Further, the exclusion of mining lakes from the area considered for the purposes of calculated residential density differs from the standard that is applicable elsewhere in the County, where man-made lakes are typically considered in the calculation of residential density. The proposed text in Policy 30.3. reiterates that mining activity extinguishes the property owner's right to utilize lake area for the calculation of density on the property. This loss of post mine development potential may likely expose the County to liability under the Bert J. Harris Act on existing operations and may possibly subject the County to liability on future proposed operations as well.

The following text within Proposed Policy 1.4.5.2.c should be deleted from consideration:

*c. Residential uses, other than a single bonafide caretaker's residence or a resident manager's unit, are not permitted in conjunction with private recreational uses or mining activities. Residential density associated with land zoned Private Recreational Facility will be extinguished and cannot be transferred, clustered, or otherwise assigned to any property in accordance with Policy 16.2.3. Residential density of mined land will be extinguished unless it is transferred to an eligible property in accordance with Policy 30.3.3.*

The text regarding Private Recreational Facilities is unnecessary. The last sentence does not recognize post mining density approval existing at this time as discussed above. It also does not account for the market factors and future Commission vision(s) that may prevail in the future, when post mining development approvals will be actually sought.

**RE: Potential Legal Issues Relating to the Proposed Revisions to the  
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5. Policy 1.4.5.d. (Policy 1.7.12 and Map 14).

Subsection d. of Policy 1.4.5. states that sufficient land exists near a traditional Alico Road corridor to meet the regional demand for limerock to 2030. However, Map 14 includes approximately 1,400 acres in the Tradeport category (mentioned previously in Paragraph 2., above), as well as significant acreage in the DR/GR proximate to the University Community that is owned by persons who have expressed no intention to pursue mining. Certain areas south of Alico Road, if mined as recommended by proposed Map 14, will impact existing communities and the University. This potential impact is contrary to Goal 10 of the Lee Plan, which discourages the approval of natural resource extraction operations, if adverse effects on surrounding land uses cannot be minimized or eliminated.

Map 14 should be modified to remove the above referenced areas from the classification of "preferred mining". The removal of this property will likely require the designation of new/additional other lands in order to maintain the representation that sufficient land is designated to meet the region's need for limerock to 2030.

6. Policy 1.7. Public Acquisition Overlay,

This policy states that the Public Acquisition Overlay does not restrict the use of land "in and of itself" but this is less clear in the policies under Goal 30. It would be helpful to reiterate the point in the Objectives and Policies that follow Goal 30.

7. Policy 1.7.13. - Rural Residential Overlay (Map 17); Policy 30.2.3.2.(c). and references to Transferred Development Rights

These policies and Map identify Mixed Use Communities along State Route 82 (SR 82) as a preferred area to cluster development of commercial, industrial, and residential uses. These Mixed Use Communities are also identified as potential receiving sites for Transferred Development Rights ("TDR's") created within the DRGR. The goal of concentrating development within nodes along the south side of the SR 82 corridor is first stated in Policy 1.7.13 by reference to Map 17 and then reiterated in Policy 30.2.3.2.(c). SR 82 currently operates below the adopted level of service on all segments. For this reason, no development orders or building permits can be issued along this corridor unless construction of improvements to widen SR 82 are included in the first three years of the FDOT five-year work program. As of today, there is only a PD&E Study underway for improvements east of Lee Boulevard. No funds are identified in the five or ten-year work program for right-of-way acquisition, permitting or construction. Moreover, Lee Plan Map 3A (2030 Financially Feasible Transportation Plan) does not reflect improvements to SR 82 until 2030. Finally, the MPO Long Range Transportation Plan does not include

**RE: Potential Legal Issues Relating to the Proposed Revisions to the  
Comprehensive Plan Based on the Dover Kohl Study, CPA 2008-06**

improvements to SR 82 east of Lee Boulevard as a financially feasible improvement by 2030. Given these facts, it is not reasonable to assume the development of Mixed Use Communities along SR 82, because permitting cannot be achieved within the current planning horizon of the Lee Plan.

Regarding the proposed creation and use of TDRs, it is our understanding that the details of the TDR program will be released shortly in the form of a report. Once our office has had an opportunity to review this report, further adjustments to the proposed Lee Plan Policies may be necessary to ensure the viability of the TDR program.

8. Proposed Policy 30.1.1. - Proposed Policy for Limerock Mining

This policy may potentially subject the County to claims under the Bert J. Harris Act. Policy 30.1.1. states that new and expanded limerock mines will be allowed *only in the areas identified on Map 14*. Mining will be precluded in other areas until there is a "clear necessity" to do so and Map 14 is amended through the comprehensive plan amendment process. Exposure to liability under the Bert J. Harris Act arises from restricting other areas containing material suitable for limerock mining within Southeast Lee County from mining pursuits. These properties are precluded from limerock mining unless it can be established there is a "clear necessity" to expand the areas already designated for mining on Map 14. The Lee Plan must be amended to change Map 14 to include the property before an application to mine may be considered by the County.

Further, to the extent Map 14 designates property that is not currently mined as preferred mining areas, it is important to establish that there is sufficient credible data (soil borings, etc.) to substantiate the designation of those properties as suitable for mining.

9. Proposed Policy 30.1.4., Subsections 1 through 3, - Limerock Mining

These new policies may negatively impact the ongoing efforts to achieve settlement of the current Florida Rock lawsuit. Settlement discussions are currently underway to achieve a resolution and the proposed policies are inconsistent with the direction of those discussions.

Proposed Policy 30.1.4.1. limits an existing mine with development order approval from amending the development order to dig a larger pit on the property. The County may face challenges under the Bert J. Harris Act, since the right to apply for an expansion of a mine footprint is currently available under our existing regulations.

David M. Owen  
July 7, 2009  
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The text in proposed Policy 30.1.4.2. is not consistent with the text in 30.1.4.1. The new Land Development Code regulations combine zoning and development order processes into one permitting procedure for mining operations.

10. Policy 30.2.4. - Restoration of Critical Lands in Southeast Lee County,

There is no identified funding source for the proposed restoration effort. In what permitting context does Lee County have the ability to impose restoration on property that is not seeking approval to mine pursuant to Map 14? Agricultural operations do not require local permits for the most part. If scattered large lot residential development continues in the areas outside of preferred mining, there is no identified means for accomplishing the restoration of those lands. Lee Plan Policy 158.6.1 requires an assessment of the financial impact of proposed regulations prior to adopting the new regulation. Has the financial impact to private property owners been performed and analyzed? If the County is to bear some or all of the cost of that restoration, there is no proposed funding source for this restoration effort.

11. Policy 30.3.5. - Proposed Policy for Residential Mixed Use Development

Proposed Policy 30.3.5. states that Lee County will establish *and fund* a DR/GR TDR bank that will offer to purchase development rights for resale. Again, a funding source for this program has not been identified.

These are some initial legal issues that need to be addressed by staff and the Board as they proceed with the consideration of the Lee Plan amendments proposed by Dover Kohl & Partners. We will address them in additional detail as the Comprehensive Plan revisions progress.

DMO/dm

xc: Andrea Fraser, Deputy County Attorney  
John Renner, Chief Assistant County Attorney  
Donna Marie Collins, Chief Assistant County Attorney  
Dawn Perry-Lehnert, Assistant County Attorney  
Karen B. Hawes, Interim County Manager  
Mary Gibbs, Director, Department of Community Development  
Paul O'Connor, Director, Planning Division  
Wayne Daltry, Director, Smart Growth





To: Roger Sims

From: Tom McLean

Date: October 23, 2009

Subject: BOCC Hearing, Oct 28/29, 2009

HM Project No. 2000.013

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Policy 1.4.5 – DR/GR –Item 1 includes the addition of language referring to “maintaining surface and groundwater levels at their historic levels” and refers to new Map 24 denoted Hydroperiods as based on review of 1953 aerial photos. The latest suggestion by staff requires that only “new” land uses that require zoning or development order approvals would be required to demonstrate compliance with maintenance of the historic levels.

- The DR/GR category is an upland category and hydroperiods are typically related to wetlands.
- The DR/GR category has locations outside of the SE Lee County Study Area. We are uncertain as how to proceed in these areas when Map 24 does not show the hydroperiods in these areas.
- The KLECE study was based only on office review of 56 year old aerial photographs with no ground truthing. This is not considered accurate science and cannot be accepted by County staff or Water Management District staff as part of the typical permitting processes.
- Establishment of water surface elevations known as the wet season water table or control elevation is governed by the SFWMD or FDEP based on rules of the state. Currently the control elevation is based on current conditions, not “historic” dating back 56 years.
- There is no way whatsoever to determine what the existing grades were specifically in 1953 let alone what the actual water surface elevations were, unless by chance there is some collected survey data accompanied by water level monitoring data.

Cemex Ex D.

- The study did not include any hydrology investigation. The property within the SE Lee County boundaries has been farmed since the 1950s and improvements such as ditching and grading have changed the original historic land. In addition the Lee County wellfield has been in operation for several decades and has pumped water from the shallow and deeper aquifers. Wellfields and wetlands are not compatible with each other.
- The study did not provide any statements as to if the current ecosystem within SE Lee County has adjusted to the changes since 1953 and is now a well functioning system. This is critical to determining if the suggested "maintenance of historic water levels" will have any real merit or benefit.
- If the objective is to restore and maintain historic water levels within all of the SE Lee County area the only real effective way to accomplish this would be to "undo" what has been systematically done since 1953 including removing the ditching, roadways and the wellfield. It would seem that the County's own wellfield system is not in compliance with its Comprehensive Plan.
- The result of restoring and maintaining historic water levels in all of the DRGR uplands would be an impoundment. Water levels do not pay attention to property lines and would effectively flood existing uses adjacent to the "new land uses" within SE Lee County. This would apply to existing farms and residential areas within SE Lee County and those developments adjacent to the SE Lee County boundary.
- The second unintentional result of the impoundment would be that water flows would be reduced to downstream areas. There are several projects that have designed and permitted wetland flowway communities downstream of SE Lee County that would be impacted as a result of the reduced drainage patterns. As a case in point, Lee County adopted the Six Mile Cypress Basin Study which states that reduction of water sources will lead to further impacts of the habitat within the Basin. A portion of the SE Lee County area includes lands within the Six Mile Cypress Basin. Reduction of water flowing to and through this Basin caused by the impounding effect within SE Lee County could further degrade the Six Mile Cypress Basin.
- From an engineering standpoint, it appears to be virtually impossible to restore these elevations without impacts to adjacent properties, since the restoration requires that water be added to the system along with the removal of the causes of the water level changes since 1953.
- As a technical point, it would appear that any "new" land use requiring zoning or a development order would be subject to this provision. Does the board understand that existing agriculture desiring a new pond or excavation or existing residential subdivisions wishing to add on to their clubhouse might be subject to the maintenance of historic levels since development orders are

required. Does the Board understand that the new Mixed Use Communities TDR receiving areas would be required to adhere to the maintenance requirement or mitigation requirement further affecting their viability?

- It would seem that maintenance of historic water elevations and priority restoration are consistent with each other. It is our opinion that the maintenance and restoration of historic surface and ground water elevations would be better served in Objective 30.2. This way it could be tied directly to the areas suggested for restoration and would not impact the existing users and the proposed mixed use community areas.

New land uses in these areas that require rezoning or a development order must demonstrate compatibility with maintaining surface and groundwater levels at their historic levels (except as provided in Policies 30.1.3 and 30.3.3) utilizing hydrologic modeling, the incorporation of increased storage capacity, and inclusion of green infrastructure. The modeling must also show that no adverse impacts will result to upstream, downstream, and adjacent property. Offsite mitigation can be utilized, and may be required, to demonstrate this compatibility. Historic wet-season water depths and hydroperiods are depicted on Map 24, based on detailed analysis of 1953 aerial photography. Additional evidence as to historic levels may be submitted during the rezoning or development review processes.

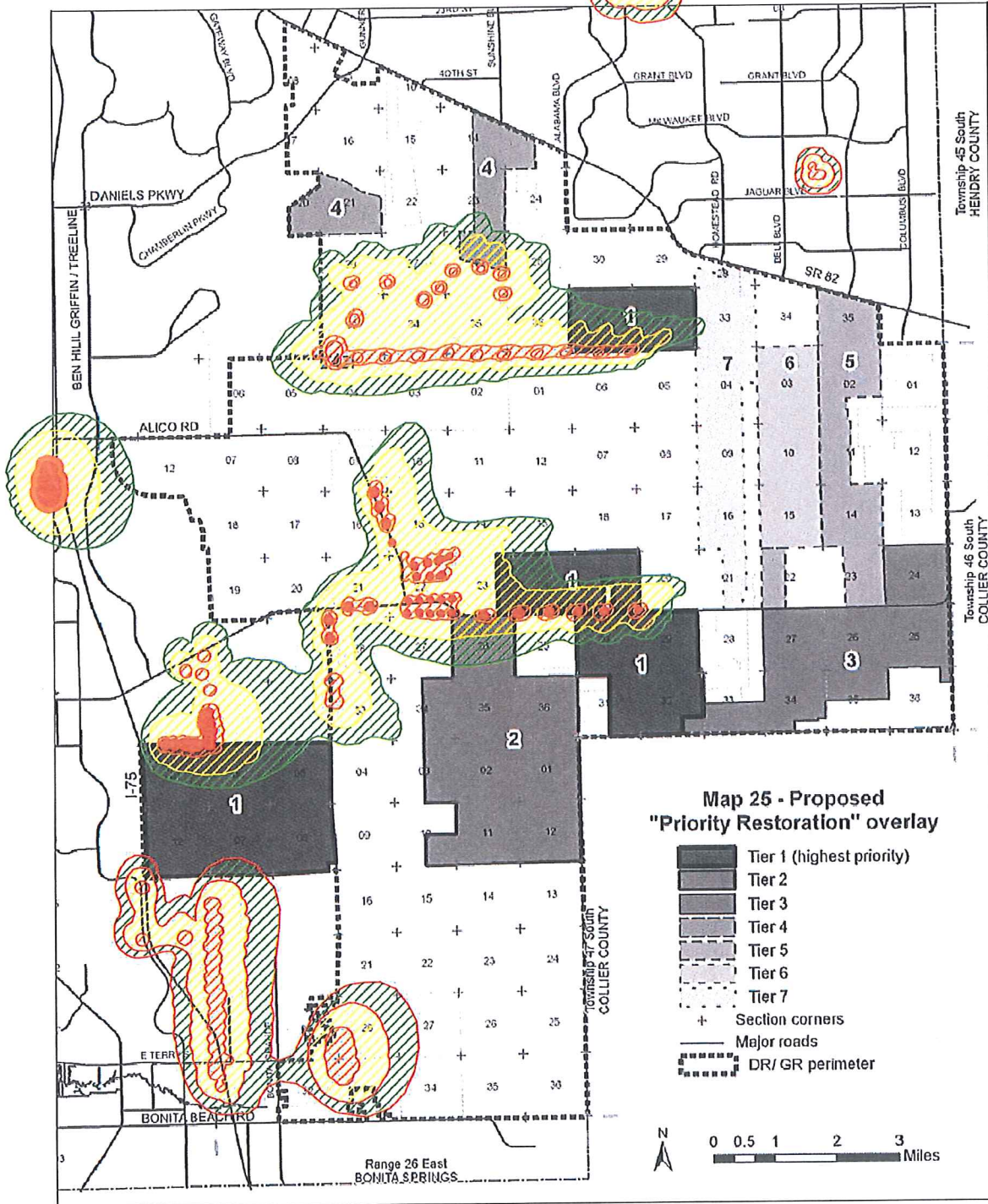
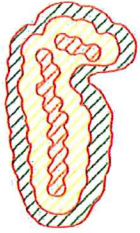


Figure 24



## Thomas W. McLean, P.E.

Vice President / Shareholder

Mr. McLean is a Vice President of Hole Montes and a Manager in the Fort Myers Land Development Department, responsible for design, permitting, platting, contracts, budgeting and construction management of land development projects.

Mr. McLean has over 13 years experience with Hole Montes and has been a Professional Engineer in responsible charge for the following tasks:

- South Florida Water Management District – Stormwater Management and ERP Permitting
- Lee County Development Order Application and Approval
- Lee County Residential and Commercial Subdivision Platting
- Florida Department of Environmental Protection – Stormwater Management Permitting
- US Army Corps of Engineering Permitting
- Lee County DOT Driveway Connection Permitting
- Florida DOT Driveway Connection Permitting
- FDEP and HRS Sewer and Water Utility Permitting
- Lee County Zoning Application and Approvals

Mr. McLean has been the project manager for several limerock and fill mines throughout Lee County, in Collier County, and in Fort Pierce representing Cemex, Florida Rock Industries, Harper Bros. Inc., SW Aggregates and other local mining companies. Hole Montes has been the engineer of record for many of these companies dating back to the 1980s.

Mr. McLean is currently the project manager for the Cemex Alico Road Quarry which is located north of Alico Road, east of Ben Hill Griffin Pkwy and directly south of the SW Florida International Airport. He has assisted Cemex in Special Exception Zoning approvals for the Phase 3A and 3B mining areas along with relocation of the processing plant from the south side of Alico Road to the north. Other tasks include permitting the mining operations through the FDEP Bureau of Mine Reclamation and local development order review processes.

Mr. McLean is also currently the project manager for Florida Rock Mine No. 2 and Harper Bros. Inc. Green Meadows Mine. His tasks have included permitting these projects through SFWMD and FDEP along with Zoning Modifications and

Development Order approvals and renewals.

Mr. McLean was the project manager for the Brown Mine and Florida Rock Mines in Collier County which are located within the North Belle Meade Sending/Receiving Lands. His tasks included permitting the mining operations through FDEP and through the local County zoning/permitting process.

### Signature Projects

- Cemex Alico North Quarry
- Harper Bros. Inc. – Green Meadows Mine
- Florida Rock Industries – Fort Myers Mine No. 2
- Florida Rock Industries – East Naples Mine
- Florida Rock Industries – Fort Pierce Mine
- SW Aggregates – Burnt Store Mine

### Education

University of Florida, Bachelor of Science,  
Civil Engineering, 1990

### Professional Registration

Professional Engineer, Florida

### Professional Experience

19 years

950 Encore Way Naples, Florida 34110 239.254.2000

6200 Whiskey Creek Drive Fort Myers, Florida 33919 239.985.1200





Environmental Consulting & Technology, Inc.

## REVIEW OF THE PROPOSED LEE PLAN AMENDMENTS Prepared by Darren Stowe, AICP

The Lee County Planning Department staff and consultants retained by Lee County have proposed Comprehensive Plan amendments to the Density Reduction/Groundwater Resource (DR/GR) future land use category as well as other changes to the Lee Plan to incorporate recommendations for addressing critical mining, traffic, and land use issues.

The Lee Plan contains goals, objectives, and policies. The objectives serve as benchmarks against which the achievement of the goal—and policy effectiveness—can be established. Goals, objectives and policies are not listed in the Comprehensive Plan in order of importance and all policies are considered equally important. The following discussion addresses the policies 1.4.5 and Objective 30.1 (as set forth by staff in the Staff Report dated September 24, 2009) as applicable to mining.

**Policy 1.4.5.2.c—The Future Limerock Mining overlay (Map 14) identifies sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through the Lee Plan's planning horizon of 2030. See Objective 30.1 and following policies.**

**Objective 30.1: Limerock Mining—Designate on a Future Land Use Map overlay sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through this plan's horizon of 2030.**

The Dover, Kohl & Partners report entitled *Prospects for Southeast Lee County Planning for the Density Reduction/Groundwater Resource Area* contains an appendix providing rationale for determining the acreage needed to fulfill the aggregate needs until the year 2030. The initial recommendations resulted in a Map 14 mining overlay that provided approximately four times this amount of acreage. Staff changes since the initial version of Map 14 have resulted in significant decreases in the acreage of allowable mining on the overlay map.

There are underlying assumptions regarding the mining of the properties that are in the mining overlay that are problematic. **It is assumed that there will be "wall to wall" mining meaning that the excavation pit footprint will encompass essentially all of the mine property.** This assumption is unrealistic and unworkable according to the County's own requirements elsewhere in the Lee Plan. The actual experience is that the mine pit will encompass approximately 25 percent of the property. Policy 10.2.4 is a new policy proposed as part of the amendments. This policy indicates that other limitations to pit size, setbacks, and depths will be determined on a case-by-case basis depending on existing neighboring uses, specific hydrogeologic conditions, wetlands and watershed protection, wildlife conservation, and transportation routes. In addition, Chapter 12 of the Land Development Code will continue to regulate mining approvals. Provisions in Chapter 12 include setbacks, buffers, future littoral zones, Conservation Easements for habitat, etc. These provisions and Policy 10.2.4 will preclude the ability to mine "wall to wall".

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## REVIEW OF THE PROPOSED LEE PLAN AMENDMENTS

Prepared by Darren Stowe, AICP

September 21, 2009

Page 2

Other very basic and erroneous assumptions are being made regarding the Map 14 overlay. The first assumption is that the resource is present and that it is present such that excavation is economically feasible. Even if limestone is present, it may or may not be of appropriate quantity and quality for mining and distribution to the market. The second assumption is that the present landowners will apply for mining approvals. There is insufficient data and analysis to support limiting future mining to those areas shown on Map 14 only. Commissioner Ron Inge of the Local Planning Agency, correctly noted that the Lee Plan's planning period of approximately 20 years is a mismatch with that of mine planning that extends as far as 80 years.

Chapter 9J-5 is the minimum criteria for review of local government comprehensive plan amendments in order to determine compliance. Map 14 is not in compliance with the State Comprehensive Plan Chapter 187.201(13)(b)9, which requires that mining and reclamation regulation recognizes the geological constraints and inherent differences in the types and locations of resources to be mined. By virtue of Map 14 being regulatory in nature, areas of proven reserves are precluded from mining approvals until after the planning horizon of 2030. Conversely, without knowledge of available resources in the areas beneath the Map 14 overlay, **there is no guarantee that the aggregate resource needs of the County and the region can be met.**

The revisions to Map 14 made by staff after the initial version presented by Dover, Kohl & Partners reduces the number of acres covered by the overlay district. The same analysis of sufficient land area within the overlay to meet the County's and region's demand for aggregate conducted by Dover, Kohl & Partners has not been conducted by staff. Given the requirements of Policy 10.2.4 and Chapter 12 of the LDC, which will prevent "wall to wall" mining, there is a need for a rigorous analysis of the land available for mining to justify Map 14 as regulatory.

The proposed amendments are not consistent with existing and proposed Lee Plan policies requiring a comprehensive approach to managing water resources. Policies 9.1.7, 60.5.5, 107.1.1(7), 117.1.5, and 152.1.7 require coordination with regulatory agencies, adjacent municipalities, and/or federal, regional, state agencies for surface water management. There has been no information provided that such coordination has occurred despite the proposed adoption of requirements for restoring water levels to reflect 1953 historic levels. It has not been demonstrated that it is even feasible that proposed developments requiring rezoning or development order approval can meet the potentially conflicting requirements to maintain/restore surface and groundwater historic levels and create no adverse impacts to upstream, downstream, and adjacent properties. **Considering the substantial drainage of the DR/GR area for conversion of undeveloped lands to agriculture, public works, and housing, returning to 1953 levels would require restoration of levels that in turn would presumably flood improvements already in place.** Should it be demonstrated that such a conflict cannot be resolved, then the development of communities as receiving areas within the DR/GR will not be possible and the transfer of development rights program will be impacted. The resulting residential development pattern will be 10-acre ranchettes (the predominant current pattern), thereby failing to resolve the conflicts between residential, agricultural, and mining land uses. Restoration efforts will be further complicated due to the lack of a viable TDR program.



## REVIEW OF THE PROPOSED LEE PLAN AMENDMENTS

Prepared by Darren Stowe, AICP

September 21, 2009

Page 3

Policy 158.6.1 requires the County to assess the impacts of new regulations upon the local economy. As proposed, the maintenance/restoration of historic surface water and groundwater levels and the conversion of land use from existing agriculture to Rural Centers and Mixed-Use communities would impact the existing tax base and could impose costs to landowners and/or the County for the physical improvements necessary to maintain/restore historic levels and/or to provide necessary infrastructure. Although it is possible that the effects could balance out between loss of agricultural land (restoration efforts) and the conversion to a higher tax base associated with development, there should be an economic analysis conducted in order to meet both the Comprehensive plan policy and the appropriate data and analysis. Lee County would experience costs for establishment of a TDR bank. Although costs could be recouped over time, there could be a considerable upfront cost.

**DARREN L. STOWE, AICP**  
**Principal Scientist**

**Education**

B.S., Biology—Cornell University, 1975  
Graduate Study, Urban and Regional Planning—Florida State University, 1990

**Registrations**

American Institute of Certified Planners  
Certified Florida Environmental Assessor

**Affiliations**

Florida Environmental Assessors Association (past president)  
SunCoast Chapter of American Planning Association

**Areas of Specialization**

Phase I/II Environmental Site Assessments and Other Due Diligence Investigations, Peer Review, Planning and Socioeconomic Aspects of Site Certification Applications and Certificate of Public Convenience and Necessity Applications, Comprehensive Plan Amendments, Expert Witness for Land Use and Socioeconomics

**Project Planner; Transmission Line Siting Act—Willow Oak to Davis, Tampa Electric Company (TEC)**—Project planner and land use expert witness for a 30-mile, 230-kV transmission line through three different municipalities. Assisted in route selection and public outreach. Testified as a land use expert before the Florida Administrative Law Judge.

**Project Planner; Phosphate Mining Land Use Approvals, Mosaic Fertilizer, L.L.C.**—Reviewed applicable comprehensive plans and land development regulations for Hillsborough, Manatee, and Hardee Counties, Florida. Prepared land use documents and presented expert witness testimony in quasi-judicial proceedings.

**Expert Witness; Land Use Planning, Multiple Clients**—Presented expert witness testimony in support of mining ordinances in Lee and Citrus Counties and in support of phosphate mining projects in Hillsborough, Manatee, and Hardee Counties, Florida. Testimony included compliance with comprehensive plans (state, regional, and local) and consistency with local ordinances and land use codes.

**Project Planner; Phase I ESA, Sargent & Lundy**—Due diligence investigations of an approximately 3,200-acre property in Taylor County, Florida, proposed for development by the Florida Municipal Power Authority as a solid fuel power plant. Prepared a comprehensive plan text amendment and amendment to the Future Land Use Map. Provided oversight of subcontractors for roadway/railroad alternatives and archaeological/historical resource surveys. Prepared land use and socioeconomic portions of site certification application (SCA).

**Project Planner; Polk Power Station Unit 6, TEC**—Prepared supporting documentation for a level 4 conditional use permit and the appropriate land use and socioeconomic sections of the SCA in support of a proposed 660-MW integrated coal gasification combined cycle (IGCC) electrical power generating plant in Polk County, Florida. The application also included new transmission lines requiring land use review.

**Project Planner; Perryman Power Plant, Constellation Energy**—Prepared the land use and socioeconomic sections of the certificate of public convenience and necessity (CPCN) application for additional simple cycle electrical generating turbines in Perryman, Maryland. Application included an analysis of potential visual impacts.

**Project Planner; Maryland CPCN Environmental Review Document, Constellation Energy**—Responsible for all land use and socioeconomic aspects of a simple cycle natural gas power plant expansion in Harford County.

**Project Planner; Maryland CPCN Environmental Review Document, Free State Electric**—Responsible for all land use and socioeconomic aspects of the proposed CPV-Charles Power Plant CPCN for the 76-acre project in Charles County, Maryland.

**Project Planner; Maryland CPCN Environmental Review Document, CPV Maryland, LLC**—Responsible for all land use and socioeconomic aspects of the CPV Charles Power Plant CPCN for the 76-acre project and 20 miles of gas pipeline in Charles County, Maryland.

**Project Planner, Land Use and Socioeconomic Efforts, Orlando Utilities Commission and Southern Company**—Prepared the land use and socioeconomic sections of the U.S. Department of Energy environmental information volume and the SCA for a proposed IGCC unit at the Stanton Energy Center in Orlando, Florida. Expert witness in the Florida Electrical Power Plant Siting Act proceedings for land use and socioeconomics.

**Project Planner; SCA for Blue Heron Energy Center, Calpine Eastern**—Completed the land use and socioeconomic background study and impact analysis sections of the application for siting a 1,080-MW natural gas-fired combined cycle electrical generating plant in Indian River County, Florida. Prepared documentation to support a Special Exception Use application to the existing agricultural zoning.

**Project Planner; Maryland CPCN Environmental Review Document; Duke Energy**—Responsible for all land use and socioeconomic aspects of the Frederick Project CPCN for a 180-acre site and associated linear facilities. Coordinated the cultural resource assessment of the plant site and surrounding viewshed.

**Project Planner, Smith Unit 3 SCA, Gulf Power**—Completed the land use and socioeconomic background study and impact analysis sections of the application for siting a 550-MW natural gas fired electrical generating plant in Bay County, Florida. Prepared documentation to support an amendment to the Future Land Use map of Bay County from an Agricultural to an Industrial designation.

**Project Planner, SCA, Duke Energy, New Smyrna Beach Power Company**—Completed the land use and socioeconomic background study and impact analysis sections of the application for siting a 550-MW natural gas-fired electrical generating plant in New Smyrna Beach, Florida. Assisted in legal counsel in evaluating consistency with Volusia County and New Smyrna Beach comprehensive plans, zoning districts, and local development regulations.

**Project Manager; Comprehensive Plan, City of Ocala**—Responsible for reviewing City of Ocala's land use designations and zoning to update the comprehensive plan. The primary focus of the update was to review and incorporate policies related to protecting groundwater from contamination by hazardous wastes, identifying and protecting wetland areas, identifying and protecting threatened and endangered species and habitats, and the identification and delineation of karst-sensitive areas. The findings of the project were presented at a public hearing.

**Project Manager; Development of Regional Impact (DRI) Services, Shimberg-Cross**—Performed DRI services for the Fishhawk Ranch Development in Hillsborough County, Florida. Regulatory approvals were granted for the 5,000-acre primarily residential development, including gopher tortoise relocation plans and conservation easements.

**Project Manager; DRI Services, Robert E. Wooley**—Performed DRI services for the Parkway Centre in Hillsborough County, Florida. Regulatory approvals included a comprehensive plan land use amendment and mixed-use zoning. An onsite active eagle nest was incorporated within the project limits to the satisfaction of numerous regulatory agencies. Conducted wetland delineations for approximately 20 separate onsite wetland areas.

**Project Manager; DRI Services, Opus South**—Performed DRI services for the University Business Center in Tampa, Florida. Regulatory approvals were granted for this office development.

**Project Manager; DRI Services, Tampa Triangle Joint Venture**—Performed DRI services for Tampa Triangle. Regulatory approvals included a mixed-use rezoning and an innovative stormwater detention system.

**Project Manager; DRI Services, Tower Marc**—Performed DRI services for Waters Avenue/Tower Marc, a mixed-use project with wetland issues and right-of-way impacts in Hillsborough County, Florida. Successfully negotiated offsite wetland mitigation.

**Project Manager and Principal Planner, Land Management Plan, Hillsborough County**—Prepared a land management plan to incorporate planned county facilities, including a regional wastewater treatment plant, a sludge treatment facility, a regional park with recreational facilities, a potential high school site, roadway infrastructure and wetlands restoration. Successfully obtained a conditional use permit for the proposed facilities in Hillsborough County, Florida.

**Project Manager and Principal Planner; Cone Ranch Land Management Plan, Hillsborough County**—Prepared a land management plan for a north-eastern Hillsborough County tract proposed as a wellfield. The plan investigated potential impact from an adjacent phosphate plant and reviewed potential revenue generating land uses.

**Project Manager and Principal Planner; Sydney Mine Land Management Plan**—Incorporated reclamation objectives into a land management plan for a portion of the Sydney Mine. Reviewed future roadway plans and the comprehensive plan for long range land use utilization possibilities after successful reclamation.

**Project Manager; Phase I/II ESAs and Remedial Actions, Southwest Florida Water Management District (SWFWMD)**—Completed numerous Phase I ESAs throughout the District. Assessed potential contamination associated with cattle pens, cattle dipping vats, and other agricultural activities. Conducted many peer reviews of due diligence documents preparing detailed review letters.

**Project Manager; Phase I/II ESA, Soil Removal, and Natural Attenuation Monitoring; Mabry Carlton Ranch**—Responsible for managing Phase I ESA of 12,000-acre, active ranch property and Phase II ESA of recognized environmental conditions associated with two cattle dipping vats and an active cattle pen area. Calculated area of soil removal through an iterative sampling and analysis program. Managed the oversight of the soil removal activities and prepared and implemented a post-monitoring groundwater sampling program. Documents prepared for SWFWMD and Sarasota County.

**Project Planner; Phase I ESA, Confidential Client**—Multi-county siting study for a potential solid fuel electrical power plant in Florida. Completed Phase I ESAs including preliminary analysis of cultural resources, wetlands, and listed species. Conducted land use compatibility review and noise ordinance implications.

**Project Manager; Phase I ESA, Florida Power & Light**—Conducted onsite investigations of two natural gas-fired electrical power plants located in Paris and Forney, Texas. Conducted extensive interviews with knowledgeable personnel to assess the status of wastewater discharges, chemical use, and chemical storage.

**Project Manager; Phase I/II ESAs, Verizon Wireless**—Managed over 30 Phase I ESAs and four Phase II ESAs throughout Florida of prospective lease spaces. Phase II ESAs assessed both onsite and offsite sources of potential impact and potential for vapor intrusion. Older developed spaces required limited asbestos surveys. Coordinated Phase I ESA efforts with other Florida ECT offices while maintaining consistency of the Phase I ESA reports.

**Project Manager; Transaction Screen Processes, Phase I and II ESAs, Numerous Banks and Lenders in the Tampa Bay Area**—Performed Phase I/II ESAs on properties ranging from day care centers to automobile repair facilities in the Tampa Bay area of Florida. Performed reviews of phase I ESA reports and prepared detailed review letters.

**Project Manager; Site Assessment, Hunt Douglas Real Estate**—Conducted site assessment activities and achieved and completed a natural attenuation monitoring program for petroleum contamination on a previously abandoned site in Tampa, Florida. Approval required review of over 6 years of assessment documentation and development of acceptable work plans for two regulatory agencies.

**Project Manager; Due Diligence Assessment, Confidential Client**—Reviewed all of the documentation associated with a known contaminated metal salvage yard in Tampa, Florida. Conducted interviews in order to advise a prospective purchaser of business and environmental risks.

**Project Manager; Limited Site Assessment, Tristar Development**—Managed a source removal and limited site assessment project associated with the maintenance facility of the Feather Sound Country Club in Pinellas County, Florida. Achieved natural attenuation monitoring approval through Pinellas County.

**Project Manager; Due Diligence Activities, GE Capital Small Business Finance Corporation**—Completed Phase I and II ESAs, peer reviews, and other due diligence inquiries for properties throughout Florida. Prepared the appropriate due diligence effort for review and approval by the U.S. Small Business Administration.

**Project Manager; Phase I ESAs, The Trust for Public Land**—Performed Phase I ESAs of many large-acre, undeveloped tracts for public acquisition for The Trust for Public Land throughout Florida. Conducted a Phase I ESA of a 3,800-acre tract in Pasco County. Subsurface investigations were conducted on two onsite landfill areas. Performed Phase I/II ESAs for proposed rails-to-trails projects in Leesburg, Sarasota County, and St. Petersburg, Florida.

**Project Manager and Senior Scientist; Phase I, II, and III ESAs and Remedial Actions, The Trust for Public Land**—Performed a Phase II ESA of an approximately 900-acre property adjacent to Kissimmee State Park in Polk County, Florida. Confirmed pesticide contamination at a cattle pen area. Assessed extent of contamination and excavated contaminated soil. Recent rails to trails assessments in Leesburg, Florida and Sarasota County, Florida.

**Project Manager and Senior Scientist; Phase I, II, and III ESAs and Underground Storage Tank (UST) Management Services, The Trust for Public Land**—Performed Phase I and Phase II ESAs for the Marineland facility to facilitate sale to three separate entities including Flagler County, the University of Florida, and a private developer. Removed USTs and contaminated soils at two separate locations.

**Project Manager; Phase I ESAs, Florida Power & Light**—Supervised the completion of Phase I ESAs of six wind turbine sites. Sites in McCamey, Upton, and Crockett Counties, Texas (107 turbines and an operation and maintenance [O&M] building); Hancock County, Iowa (148 turbines and an O&M building); Cerro Gordo County, Iowa (55 turbines and an O&M building); Iowa County, Wisconsin (20 turbines and an O&M building); and Pipestone County, Minnesota (138 turbines and an O&M building) were developed. One site in Solano County, California, was a proposed site of up to 90 turbines spread across approximately 5,983 acres. The Phase I ESAs consisted of site visits accompanied by knowledgeable personnel, database records searches including available aerial photography searches, a search of other available standard historical sources, review of prior available reports, and preparation of reports. All of the investigations and reports were delivered on time and on budget. ECT coordinated the work effort using the resources of the Tampa and Michigan offices.

**Project Manager; Phase I ESAs, FPL Energy**—Supervised the completion of six Phase I ESAs and three Phase I ESA updates of nine existing wind turbine sites in seven states. A tenth Phase I ESA was conducted of an approximately 10-mile long transmission corridor as part of the same project. The sites consisted of:

- A 38-turbine site in Umatilla County, Oregon.
- A 27-turbine site, an operations and maintenance (O&M) building, and an electrical substation facility near Highmore, South Dakota.
- A 44-turbine and O&M building site in Tucker County, West Virginia.
- A 68-turbine and O&M building site near Woodward, Oklahoma.
- A 43-turbine and O&M building site in Lackawanna and Wayne Counties, Pennsylvania.
- A 41-turbine, an O&M building, and an electrical substation facility near Edgeley, North Dakota.
- A 20-turbine and O&M building site in Somerset, Pennsylvania, and
- An 80-turbine site, an O&M building, and an electrical substation facility near Evanston, Wyoming.

The Phase I ESAs and updates consisted of site visits accompanied by knowledgeable personnel, database records searches including available aerial photography searches, a search of other available standard historical sources, review of prior available reports, and preparation of reports. All of the investigations and reports were delivered on time and on budget. ECT coordinated the work effort using the resources of the Tampa and Michigan offices.

**Project Manager; Phase I/II ESA, and Supplemental Phase II, FPL Energy**—Supervised the field effort for due diligence and baseline condition investigations of an active 7,000-acre citrus grove property in southwest St. Lucie County, Florida. Assisted client in development of work scope and preparation of a final report for opposing legal and environmental consultant

review. Report was prepared to the standards of the South Florida Water Management District.

**Project Manager and Principal Scientist; Hendry Ranch, Carlyle Investments**—Completed Phase I and II ESA, site assessment, and source removal in Hillsborough County, Florida. Detected contamination at cattle dipping vat associated with arsenic and at cattle pen area associated with organochlorine pesticides. Oversaw source removal activities.

**Project Manager; Phase I and II ESAs, UST Management Services, Tire & Auto Centers**—Performed Phase I ESAs throughout the state of Florida and sites in Georgia of existing tire facilities. Conducted Phase II ESAs, oversight of UST and contaminated soil removal, and conducted closure assessments.

**Project Manager; Phase I and II ESAs, City of St. Petersburg and Pinellas County Real Estate**—Performed Phase I and II ESAs for developed and undeveloped properties in Pinellas County, Florida.

**Project Manager; Site Assessment, Business Communities, L.L.C.**—Conducted source removal activities and site assessment to achieve a natural attenuation monitoring plan approval through Pinellas County, Florida.

**Project Manager and Senior Scientist; Phase I ESAs, Baseline Natural Resource Inventories and Range Analyses, SWFWMD**—Performed environmental assessments and natural resource inventories for over 15 properties throughout Florida ranging in size from 35 acres to nearly 2,000 acres. Performed additional Phase I ESAs on properties up to 27,000 acres in size.

**Project Manager; UST Management Services, Department of Health and Rehabilitative Services (HRS)**—Developed specifications for UST abandonment and provided closure assessment oversight services for a Hillsborough County HRS facility.

**Project Manager; Phase I, II, and III Environmental Services, Confidential Client**—Performed Phase I, II, and III environmental services for a 200,000-square-foot manufacturing facility in Sarasota County, Florida.

**Project Manager; Phase I ESA, Confidential Client**—Conducted a Phase I ESA of a 2,750-acre actively cultivated agricultural property in Manatee County, Florida. Noncompliance issues were identified with numerous above-ground storage tanks.

**Project Manager and Senior Scientist, Preliminary Contamination Assessment, Confidential Client**—Conducted soil and groundwater investigations in support of an application to construct on a former landfill in Tampa, Florida. Oversaw geotechnical and civil engineering firms in preparing and submitting the application to a local regulatory agency.

**Project Manager, Phase II ESA and Support Consulting Services, Hillsborough County**—Conducted soil testing and construction oversight of a roadway construction project in that area adjacent to a former city of Tampa landfill.

**Project Planner; Lowe's Home Improvement Center**—Phase I and II ESA, permitting for construction on a former landfill, and post-construction moni-

toring in Tampa, Florida. Assessed extent of impact associated with the burial of solid waste. Oversaw post-construction monitoring of landfill gas generation and groundwater.

**Senior Scientist; Due Diligence Assessment, Confidential Client**—Provided consulting services to assess potential contamination/non-compliance liability issues associated with electrical generation power plants (coal, oil, and natural gas). There were two fossil plants in Maine and Montana and four plants in Connecticut assessed for bidding purposes.

**Photointerpretation**—Numerous photointerpretation projects identifying wetlands for the U.S. Fish and Wildlife Services's National Wetlands Inventory. Reviewed infrared photography for wetland delineation through the southeastern United States. Performed trend analysis to document the historic gain and loss of wetland acreage.





• Planning • Visualization  
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October 27, 2009

Mr. Roger Sims,  
Holland & Knight  
200 South Orange Avenue, Suite 2600  
Orlando, FL 32801

RE: Lee County DR/GR Comprehensive Plan Amendment, CPA 2008-06

Dear Mr. Sims:

Pursuant to your request, I have reviewed the *PROPOSED LEE PLAN AMENDMENTS FOR SOUTHEAST LEE COUNTY, Planning for Density Reduction/Groundwater Resource Area (DR/GR)*, and focused my attention on the issue of Property Rights and the Transfer of Development Rights (TDR) program proposed in Policies 30.1.3 and 30.3 of the Plan Amendment and further defined in the *Transferable Development Rights In Southeast Lee County* report produced by Dover, Kohl & Partners and dated July, 2009. Based upon that reviewed I have identified several issues related to the proposed amendments and the proposed TDR program.

1. Policy 1.4.5 (2)(c) as proposed by Dover-Kohl, contains the following language:  
"Residential Density of mined land will be extinguished unless it is transferred to an eligible property in accordance with Policy 30.3.3"

In current Planning theory and practice, it is commonly accepted that a given piece of land contains a bundle of property rights which, in the State of Florida, are identified in the Comprehensive Plan, and regulated or implemented through the Land Development Code. The development rights within this bundle can be enjoyed concurrently or successively; however, the utilization of one use does not normally extinguish the ability of a property owner to enjoy another use, either concurrently or independently, in the future. In the past, mining a property in Lee County was not construed so as to extinguish other property rights and has not negated the ability to reclaim a mined area and convert it in an attractive and economically viable development (residential, commercial, mixed use, recreational, etc). In the DR/GR, mine owners have retained their underlying density of 1 dwelling unit per 10 acres and the ability to potentially exercise that density. The proposed Dover-Kohl policy is a significant departure from common planning practices. While it does provide the ability to transfer these long existing residential property rights to an appropriate "receiving" area, it does not consider the logistical and financial challenges involved in finding and purchasing a suitable receiving site, or the ability to sell those development rights (that is the market

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feasibility), and the time and costs associated with such a transfer. Additionally, these challenges are compounded by the uncertainty of how the TDR Program will function and be administered.

In my professional opinion, the extinguishment of residential density within the DR/GR establishes a significant departure from how other properties in Lee County are treated and a departure from commonly accepted Planning practices in Florida. This special treatment as outlined by Donna Marie Collins in her Legal Memo to the BOCC, dated September 16, 2009, "may expose the County to liability under the Bert J. Harris Act." Furthermore, this Policy which proposes an extinguishment of residential density is premature given that the TDR program has not been properly defined and publically vetted at this time. While it is understandable that the programmatic details will develop in the near future, the TDR strategy as outlined in the Dover-Kohl report includes significant nuances and uncertainties that could potentially render a TDR program unfeasible. Further discussion on this issue is provided below. **Therefore, we strongly support staff's recommendation to remove this clause from Policy 1.4.5.**

2. Policy 30.1.3 as proposed by staff sets forth the following, "The Land Development Code will be amended and maintained to include provisions for assessing and mitigating mining impacts and for **transferring residential development rights** on land zoned for limerock mining pits." This section of Policy 30.1.3 essentially establishes a TDR program within the DR/GR. Some of the ensuing policies further characterize this program; however, much of the detail is relegated to the Land Development Code. This lack of detail is cause for concern in two distinct ways: A) it does not properly describe how a TDR program can effectively address mining rights; and B) it does not provide sufficient detail for professionals and the public to properly assess the market feasibility and potential costs of a TDR program in the DR/GR.
  - A) It is understood that the proposed amendments must be analyzed along with the companion TDR report from Dover-Kohl. This report does an excellent job of defining TDR programs, explaining the economics associated with them, and outlining a general TDR strategy for Lee County. Dr. Nicholas clearly and succinctly provides compelling arguments for the use of TDRs and demonstrates that they can be an effective tool providing numerous benefits. However, this report is missing a critical component: it does not address how the loss of mining rights can be mitigated through a TDR program.

While TDRs are used in many different ways and for multiple purposes, they most significantly address regulatory takings by mitigating for the lost development rights in a given area by allowing those development rights to be transferred to a more appropriate area. TDRs have been upheld by the courts. TDR programs have been very successful in locations throughout the country when properly implemented. TDR programs are considered by the Planning Profession to be a useful and effective land

use tool. However, heretofore, TDR programs have been designed to deal with residential and commercial (through a residential-commercial conversion ratio) development – not mining. It is often assumed that the highest and best use of a parcel is residential or commercial development, which is adequately demonstrated by the continued conversion of agricultural lands to these uses. As a result, TDR programs have been designed to address those uses which can be easily transferred from one location to the next. However, mining is location specific. That is, mining rights cannot be transferred from one area (where the resource is located) to another area (void of that resource). This holds especially true for lime rock deposits in Florida. Limerock is a scarce resource found in a select few places throughout Florida. One of the most significant deposits that have been deemed strategically crucial to the State is found within the DR/GR. Asking or allowing property owners to mine elsewhere is not feasible – mining must occur where the resource is located.

Theoretically, TDRs could potentially be used to mitigate for lost revenue generated from mining. The revenue that could be generated from a mining operation could be estimated and converted to an equivalent number of residential units (or even commercial square footage) that would effectively offset that lost revenue. While this is theoretically feasible, it is technically impossible. So many market factors affect mining, as well as housing and commercial real estate values, that such a strategy would not be feasible. Additionally, the resulting density from this conversion might be much more than the market and County can accommodate.

- B) Policy 30.3.4: The Land Development Code will be amended within one year to specify procedures for concentrating existing development rights on large tracts, for transferring development rights between landowners, for seeking approval of additional acreage subdivisions, and for incorporating commercial and civic uses into Rural and Mixed-Use Communities as designated on Map 1.*

As acknowledged in the staff report, *“the parameters and function of this program (TDR and TDR Bank) are deliberately being left open ended. The companion study analyzing TDR’s should help in establishing the proper regulations in the land development code.”* While it is common to approach such programs in an incremental fashion, a solid regulatory framework for any TDR program has to be outlined in the Comprehensive Plan.

The proposed TDR policies and are so brief and nebulous that they fail to provide basic information needed to properly assess and vet the proposed program, as well as begin to address fundamental issues typically raised by the Department of Community Affairs. In fact, it is a requirement to identify, at a minimum, the maximum allowable intensity (for commercial uses) and density (for residential uses) in the Comprehensive Plan. The companion study is very informative and provides a TDR strategy with a multitude of potential tools but does not provide any certainty as to how an actual program would be implemented. The following items in particular,

are left “open-ended” and require more specificity:

- On page 2.24 of the TDR Report, it is acknowledged that the presently identified receiving areas in the DR/GR could absorb 6,000 units (and presently that is the maximum number that could be created), but that 14,358 TDR units (a number that includes potential bonuses) could be generated from the sending areas. According to the report *“it would appear that there would be a need for additional receiving areas ..... and ..... seeking additional receiving areas could strengthen the economic viability of any TDR program adopted for this area”*. It has been suggested that areas outside of the DR/GR be identified as receiving areas. However, no specific areas have been studied and the feasibility of making those areas receiving sites has not been analyzed. Dr. Nicholas points out that “Use by Right” is a crucial element in ensuring the success of a TDR program. Therefore, transferring density to urban areas outside of the DR/GR becomes problematic. When transferring density to those areas, densities above and beyond maximum allowable densities would be needed to make the program viable. A guaranteed ability to use this TDR density would be needed. This would be in significant conflict with how density ranges are addressed in the Lee Plan and how density is typically approved as part of the PD process.

Within the identified “Mixed-Use Community” receiving areas in the DR/GR, the maximum allowable gross density needs to allow for a density that will support a mixed use project. Moreover, there needs to be incentives for directing the TDRs to preferred “receiving” area locations and incentives to preserve the highest priority Sending lands (possibly a “tiered” approach).

- In Chapter 3 of the report, Dover Kohl identifies potential receiving sites and does an excellent job defining how those areas could be developed. However, these receiving areas, identified as Mixed-Use Communities, are all located along S.R. 82. S.R. 82 has a failing Level of Service (LOS) along the segments where these new developments would be located. Under the current concurrency management system this would render development impossible until significant improvements were made to the road. At this time, no funds have been allocated to upgrade this road and eliminate the LOS deficiency. As a result, the proposed Mixed-Use Communities could not be developed until the State and County identify and allocate funds to improve this road or unless the development community pays for the significant improvements. Either scenarios renders development of these new communities unfeasible in the foreseeable future.
- On page 4.7 of the report, potential density incentives or bonuses are also provided. These bonuses could significantly affect the total number of TDR units that could be transferred. The potential supply of TDRs could have

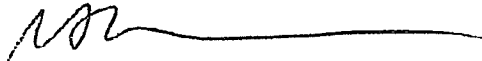
significant repercussions on how much receiving areas are required, the densities allowed within the proposed Rural and Mixed-use Communities, and the market or financial impacts from a greater TDR supply.

- Appropriately addressing potential density and receiving acreage resulting from the proposed TDR program is a crucial element in ensuring internal consistency within the Lee Plan. Policy 1.7.6 of the Lee Plan provides a Planning Communities Map and Acreage Allocation Table, which depicts the proposed distribution, extent and location of development for a given time period. A total number of acres that can be developed in each Planning Community is provided. Typically, these acreage amounts are reviewed as part of the Evaluation and Appraisal Report process and increased as needed. Staff acknowledges that industrial acreages will need to be increased to accommodate limerock mining in Planning Community # 18, but staff does not address any other changes that might result from identifying new receiving areas.
  - Additionally, on page 10 of 23 of the staff report, staff notes that the conversion of TDR units into commercial floor area may be a crucial component to ensure that the Mixed-Use Communities satisfy both their own needs and those of the adjacent Lehigh Acres community. The Plan amendments do not address this issue nor is there any certainty provided regarding the establishment of such a conversion ratio. A decision such as this should not be relegated to the LDR stage. This entails a policy decision that should be determined when establishing the TDR framework in the Comprehensive Plan.
3. Lastly, Policy 30.3.5 addresses the establishment of a DR/GR TDR bank. We strongly support staff's recommendation to evaluate the feasibility of such a bank rather than simply committing to its establishment. However, we believe that the evaluation should occur prior to adopting the proposed TDR program. The TDR bank is a very important component of the proposed program and could have significant repercussions on the financial feasibility of the TDR program and the County as a whole. Policy 158.6.1 of the Lee Plan requires that the County assess the impact of new regulations upon the local economy. The County has failed to do so and while a significant budget was allocated for the DR/GR study, it was not deemed unnecessary to conduct a fiscal analysis and comply with Policy 158.6.1. The TDR program needs to be assessed in order to:
- Determine if it is financially feasible – appropriate sending and receiving lands, total number of TDR units, appropriate bonuses, estimated value of TDR units
  - Assess the cost of administering the TDR program – staff requirements, infrastructure investments
  - Evaluate economic impacts to the County – how will the program affect land values

and the resulting tax base over time, what are the costs associate with the TDR bank and what are the benefits

In closing, I commend Dover-Kohl and staff for the arduous work they put into creating the TDR study and resulting Lee Plan Amendments, but believe the "open-endedness" of the TDR policies creates such uncertainty that it opens up the entire program to potential Bert Harris claims, as well as the likelihood of substantive Objections and/or Recommendations and Comments as part of the Department of Community Affairs ORC Report. The TDR study lays down a solid initial strategy for developing a sound TDR program in the DR/GR, but more work is needed to refine the details and ensure that the proposed program obtains appropriating public vetting, and that it truly achieves the desired objectives.

Sincerely,



Robert J. Mulhere, AICP  
RWA, Inc.

cc: File  
Tracy Bryant, Matt Mouncey, Cemex Construction Materials, Inc.  
Mark Stephens  
Darren Stowe  
Neale Montgomery  
Tom McLean

**Robert J. Mulhere, AICP**  
Senior Vice President

#### Education

*Saint Michaels  
College, VT / BA /  
Political Science /  
1977*

*Florida Gulf Coast  
University, FL /  
Masters / Public  
Administration /  
2001*

#### Registration / License

*American Institute  
of Certified  
Planners (AICP)  
#010931*

*American  
Planners  
Association  
(APA), #077255*

#### Professional Societies

*American Institute  
of Certified  
Planners  
1994 – Present*

*American Planning  
Association,  
1989 – Present*

*Florida Chapter  
American Planning  
Association  
1989 – (Elected  
Secretary 2005 –  
2006)*

*FAPA Promised  
Lands Section  
President 2001-  
2002*

*American Society  
of Public  
Administrators  
1994 - Present*

*Urban Land  
Institute of  
Southwest Florida  
1998 – Present*

#### Experience Summary

Mr. Robert J. Mulhere, Senior Vice President and Director of Planning, has more than 20 years of professional planning experience in Florida. At RWA, Bob heads up a Planning Department adept at zoning and site planning; visioning; comprehensive and strategic planning; community and neighborhood plans; public facilitation and participation; master planned communities; and expert testimony. Prior to commencing employment with RWA, Bob was employed as the Director of Planning for Collier County Government. After leaving Collier County in 2001 to join RWA, Inc., Collier County retained Bob to oversee the planning aspects of the County's vast Rural and Agricultural Assessment covering nearly 300,000 acres of agricultural and environmentally sensitive lands in eastern Collier County. The result of this three-year plus assessment was the development of the award winning Rural Lands Stewardship Area and Rural Fringe Area Programs. These are incentive-based programs focusing on protection of critically important listed species habitat areas, wetlands and flowways, and the need to balance these environmental protection measures with protection of private property rights.

Bob continues to work with rural agricultural communities throughout Florida to develop incentive-based regulations that protect important environmentally sensitive lands, and to promote agriculture, with full consideration of the private property rights of the landowners in these areas. Bob holds a Bachelors of Art in Political Science from St. Michael's College, and a Master's degree in Public Administration from Florida Gulf Coast University. He has been a member of the American Institute of Certified Planners (AICP) since 1994.

#### Representative Projects

**Rural and Agricultural Lands Study, Hendry County, FL** – Principal in Charge for study related to rural lands and the agricultural industry in Hendry County. Plan included analysis of existing conditions and creation of new comprehensive plan goals, objectives, and policies, and a framework for development in rural areas while protecting agriculture and important natural resources.

**Rural Area Plan, Highlands County, FL** - Principal in Charge for study that addresses protecting the rural character of Highlands County. Analysis of existing mechanisms to protect rural lands, creation of an easily implemented transfer of development rights program, and comprehensive standards for new development were presented.

**Immokalee Area Master Plan Update, Collier County, FL** – Principal in Charge for update to the Immokalee Area Master Plan for the Immokalee Community Redevelopment Agency in eastern Collier County. The update will result in amendments to the Collier County Growth Management Plan and changes to the Collier County land development code in order to fully implement the community vision.

**Collier County Professional Planning Services, Collier County Attorney's Office, Collier County, FL** – Planning consultant for the Collier County Department of Transportation and County Attorney's Office providing services related to Eminent Domain issues as well as preparing conceptual site plans for curing sites after taking. Projects included the Right-of-Way taking and curing analysis of Immokalee, Santa Barbara, Goodlette-Frank and Pine Ridge Roads.

**Awards**

2006 – N Magazine  
and the Education  
Foundation of Collier  
County's Man of  
Distinction

2001 - Award of  
Excellence-Florida  
American Planning  
Association

2000 - Award of Merit-  
Florida American  
Planning Association

1997 - Award of  
Excellence-Florida  
American Planning  
Association

1997 - Top 30  
Leaders of 20<sup>th</sup>  
Century – Marco  
Island Eagle

1997-Marco Island  
Citizen of the Year  
Naples Daily News

**Bonita Beach Road RPD, Bonita Springs, FL** – Principal in Charge of preparing, submitting, and providing professional planning consultation services for a City of Bonita Springs Comprehensive Plan amendment, with a designation of Moderate Density Mixed Use Planned Development (Mod. Den. MU/PD).

**Collier County RLSA (Rural Stewardship Credit System (RSCS) and Rural Fringe Transferable Development Rights (TDR) Programs; Board of County Commissioners; Collier County, FL** – Principal in Charge and Project Manager responsible for the oversight of the development of the RLSA and Rural Fringe TDR Programs. This included the process by which landowners may obtain designation as a Stewardship Sending Area (SSA) and/or a Stewardship Receiving Area (SRA). Scope included process delineation for obtaining stewardship credits by the property owner through an application process. The scope encompassed overseeing the implementation of the designation process into a user-friendly database system for use by County staff, as well as mechanisms for regular maintenance, updates, data backup, and easy public information access. Appropriate Growth Management Plan (GMP) Goals, Objectives, and Policies (GOPs), and implementing Land Development Code (LDC) amendment were written to accomplish project objectives: to protect wetlands and habitat for listed species; enhance the economic viability of agricultural land, and identify land suitable for possible conversion to other uses.

**Miscellaneous Public Sector Involvement, Collier County, FL** – Responsible for administration and interpretation of the Collier County Comprehensive Plan and the Collier County Land Development Code. Staff liaison to the Collier County Planning Commission, the Collier County Environmental Advisory Council, and several other advisory boards, committees and subcommittees. In this capacity, Mr. Mulhere directed the development of numerous zoning overlays and land code amendments, including the Marco Island Zoning Overlay, the Collier County Rural Fringe Mixed Use District Overlay, The Immokalee Zoning Overlay, the development of Commercial Architectural standards in Collier County, as well as comprehensive rewrites of Collier County's sign and landscape codes.

**Bonita Beach Road RPD Annexation and Comprehensive Plan Amendment (CPA), Bonita Bay Group, Bonita Springs, FL** – Principal in Charge responsible for providing planning reports, required application and related documents required to annex 1290 acres into City of Bonita Springs and amend the Comprehensive Plan to include the subject property under the Moderate Density Mixed Use Planned Development designation. Provided CPA Application Support (CPAs) by coordinating sufficiency responses required by DCA, RPC and Lee County planning staff and/or City of Bonita Springs staff. Client representative for all public hearings of the City of Bonita Springs Local Planning Advisory Board (LPA) and City Council. Provided expert testimony as it related to planning issues and consistency of the proposed amendment with the City of Bonita Springs Comprehensive Plan.





**Education**

*York University, Toronto, Ontario, Canada / Masters / Environmental Studies / Urban and Regional Planning Concentration/2002*

*Concordia University, Montreal, Quebec / BA / Economics / 1994*

**Registration/ License**

*American Institute of Certified Planners (AICP), 2002 –*

*Canadian Institute of Planners (CIP), Provisional Member, 1998 –*

**Boards/ Appointments**

*Lee County Land Development Code Advisory Committee*

*Bonita Springs Chamber of Commerce, Government Affairs Chair*

*Florida Redevelopment Association, Regional Representative*

**Professional Affiliations**

*American Planners Association, 2001 –*

*Florida Chapter of the American Planners Association, 2001 –*

*Florida Planning and Zoning Association 2007-*

*Lee County Building Industry Association, 2003 –*

*Real Estate Investment Society, Southwest Florida, 2006 –*

**Patrick Vanasse, AICP**  
Planning Manager

**Experience Summary**

Mr. Patrick Vanasse, AICP, has more than eleven years experience in South Florida with a demonstrated ability in successfully managing urban planning, land-use, and public sector projects. He has extensive experience working with an array of comprehensive plans and land development codes, as well as creating land development regulations and comprehensive plan language for master planned developments throughout Southwest Florida. He has a proven track record for improving organizational efficiency, securing strategic alliances, and forging cooperative relationships with agency and local government staff. Mr. Vanasse is an effective communicator with a keen aptitude for integrating and analyzing diverse information.

As Planning Manager for RWA, Mr. Vanasse oversees the planning department in the Fort Myers office, and is responsible for providing consultation services to private and public sector clients. These services include: project management, rezoning petitions, due diligence reports, comprehensive plan amendments, master planned communities, public facilitation and participation, urban design, and site planning.

**Representative Projects**

*Land Use and Zoning*

**Cemex DRGR Monitoring Services, Lee County, FL** – Responsible for general consultation services related to monitoring the DRGR process, attending BoCC hearings and Ad Hoc Committee meetings, reviewing mining documentation and reporting back to the Client. Assisting the client address proposed mining LDC amendments, and representing their interests before staff and commissioners.

**Hogan Island Quarry, Collier County, FL** – Part of team responsible for obtaining a conditional use permit for a 900-acre rock mine that will produce FDOT-grade aggregate. The project is located on Oil Well Grade Road, approximately one mile north of Immokalee Road. The project team addressed staff, EAC, and CCPC comments and questions so effectively that it was approved by the BCC on their summary agenda.

**Rural and Agricultural Lands Study, Hendry County, FL** – Project Manager for study related to rural lands and the agricultural industry in Hendry County. Plan included analysis of existing conditions and creation of new comprehensive plan goals, objectives, and policies, and a framework for development in rural areas while protecting agriculture and important natural resources.

**Hendry County Fixed-Term General Services Contract, Hendry County, FL** – Project Manager responsible providing general planning, engineering and survey support services to Hendry County. Contract requires close coordination with the Planning and Development Director in conducting application reviews, and comprehensive plan and socio-economic research related to EAR-based amendments.

**Publications**

V. Leeworthy, P.  
Vanasse, Economic  
Contribution of  
Recreating Visitors to  
the Florida Keys for the  
Years 1996-97 and  
1997-98, *Special  
Projects Office, National  
Oceanic and  
Atmospheric  
Administration, June  
1999.*

**Patrick Vanasse, AICP**

Page 2

***Immokalee Area Master Plan Update, Collier County, FL*** – Project Manager involved in the update to the Immokalee Area Master Plan for the Immokalee Community Redevelopment Agency in eastern Collier County. The update will result in amendments to the Collier County Growth Management Plan and changes to the Collier County land development code in order to fully implement the community vision.

***Rural Area Plan, Highlands County, FL*** - Project Manager for study that addresses protecting the rural character of Highlands County. Analysis of existing mechanisms to protect rural lands, creation of an easily implemented transfer of development rights program, and comprehensive standards for new development were presented.

***Pelican Preserve Special Development Area/Development of Regional Impact, City of Fort Myers, FL & Gateway DRI, Lee County FL*** – Responsible for professional planning services associated with obtaining a Comprehensive Plan Amendment from the City of Ft. Myers and Notice of Proposed Change approval from the City, County and the Regional Planning Council. The project entailed removing 417 acres from the Gateway DRI and adding it the Pelican Preserve DRI. The petitions also included a reduction in some uses and a 500 dwelling unit increase within Pelican Preserve.

***Sabal Bay, Planned Unit Development, Collier County, FL*** – Responsible for the rezoning petition to allow the development of a 2,416-acre mixed-use planned development that includes commercial development, hotel uses, a golf course, and a mix of multi-family and single family homes. Worked with consultant team to address complex land-use, drainage, transportation, wildlife and environmental challenges associated with the property.

***Immokalee Road South Rural Village, Mixed-Use Planned Unit Development, Collier County, FL*** – Responsible for developing the PUD document and associated land development regulations for the first Rural Village rezone submitted in Collier County. Worked with consultant team to interpret the Rural Fringe Mixed Use (RFMU) section of the Land Development Code in order to develop a master plan and regulations that would incorporate the protection of native vegetation, wildlife corridors, a unified architectural theme, a mix of uses and housing types, an affordable housing component, and compact walkable neighborhoods.

***Bayshore-Samville Commercial Planned Development, Lee County, FL*** – In charge of obtaining zoning entitlements for a 15.2 acres Commercial Planned Development, which will contain 170,932 square feet of retail, office space, mini-storage, and other commercial uses. The project is located at the intersection of Bayshore and Samville Roads, and will provide a neighborhood commercial center that will serve the local North Fort Myers community.

***Bonita Beach Road Residential Planned Development, Comprehensive Plan Amendment, City of Bonita Springs, FL*** – Scope of services included preparation, submittal and support of a comprehensive plan amendment that created a new Future Land Use category for two sections of land annexed into the City of Bonita Springs. This new category incorporates innovative design and planning principles as well as extensive protection of environmentally sensitive lands. Approval of this project required extensive cooperation with the City and the Department of Community Affairs.

***East Bonita Active Adult, Residential Planned Development, City of Bonita Springs, FL*** – Project manager responsible for the rezoning application and planning support needed to obtain rezoning approval for a 295-acre active adult community. This project is located in Urban Fringe Community District and consists of 799 single-family and multi-family units, 50,000 square feet of amenity center uses and indigenous preserve.

***Bonita Beach Road Estates, Residential Planned Development, City of Bonita Springs, FL*** – Project manager responsible for the rezoning application and planning support needed to obtain rezoning approval for a 504-acre, mixed-use, residential community. This project is located in Urban Fringe Community District and consists of 1,200 single-family and multi-family units, 30,000 square feet of amenity center uses and indigenous preserve.

***Bonita Beach Golf Club, Residential Planned Development, City of Bonita Springs, FL*** – Project manager responsible for the rezoning application and planning support needed to obtain rezoning approval for a 500-acre, golf community. This project is located in Urban Fringe Community District and consists of 1,601 single-family and multi-family units, 50,000 square feet of amenity center, 18 holes of golf and indigenous preserve.

***Tree Farm Mixed-Use Planned Unit Development, Collier County, FL*** – Pursuing zoning entitlements for a 56 acre, mixed-use development located at the intersection of Immokalee Road and Collier Boulevard. This project will include approximately 18.65 acres of Mixed-Use Activity Center that will mainly support commercial activities with some accessory residential units. The remainder will consist of office park uses and a multi-family residential community that will include workforce housing.

***Tuscany Preserve III & IV at Lake Marion, Polk County, FL*** - In charge of the preparation, submittal and support of rezoning petitions for mixed-use planned developments within the Poinciana Pre-DRI. Responsibilities included site design, client representation, extensive investigation of vested rights and historical land uses and GIS exhibition.

***Lake Marion, Binding Letter of Interpretation for a Major Modification (BLIM) to a Pre-DRI, Polk County, FL*** – Responsible for extensive investigation of vested rights and historical land uses within the 48,000-acre Poinciana Pre-DRI. In charge of representing the land owner before the Department of Community Affairs, and developing arguments and GIS exhibits required to obtain a BLIM from DCA that allows for vested development rights to be maintained and redistributed within the 1,200 acre property owned by the client.

***Ibis Lake Estates, Residential Planned Development, Lee County, FL*** – In charge of the project team providing professional planning, engineering and land surveying services for a 92.0 acre property being rezoned to a Residential Planned Development (RPD) with a general excavation permit. This project will consist of a mining operation before it is reclaimed and converted in to a residential community with estate-sized lots overlooking a sizeable lake. The scope of services being provided include site planning, RPD rezoning, civil engineering design, ERP permit application, and construction plans and technical specifications.

**Barry Mining Planned Unit Development, Hendry County, FL** – Providing professional planning services required to rezone property from AG to a Mining PUD. The mining operation will be confined to ± 60 acres of uplands and will supply fill and aggregate for local development. After mining operations cease, the resulting pit shall be utilized as a water management lake to address drainage and water quality issues in the area. The lake reclamation plan includes replanting of native plants and the construction of littoral shelves to create habitat for wading birds and other species.

**Sonoma Oaks, Mixed-Use Planned Unit Development, Collier County, FL** – Responsible for rezoning application for a mixed-use commercial and residential project located along Collier Boulevard in close proximity to Vanderbilt Beach Road. The approved PUD consists of 112 residential units and 120,000 square feet of office and retail space on a 37.5-acre parcel.

**Windsor Road Community Facility Planned Development, City of Bonita Springs, FL** – Responsible for obtaining rezoning approval to allow the development of a joint use project between Bonita Springs Utilities and the City of Bonita Springs. Project allows for a two million gallon potable water tank and a public park including passive recreational uses and preserve. This project required extensive coordination with the co-applicants and the public to ensure compatibility with the surrounding residential community.

**Bonita 30 Residential Planned Development, City of Bonita Springs, FL** – Responsible for rezoning petition to allow the development of 138 multi-family units on a 23.56 acres parcel abutting Three Oaks Parkway in Bonita Springs. The original project boundary and site plan required significant modification pursuant to two takings on the property – a right-of-way taking by Lee County DOT, and a 10-acre taking by FDOT for a water management pond.

**Bonita 120 RPD & Bonita 30 RPD, Eminent Domain, City of Bonita Springs, FL** – Providing expert witness planning services for eminent domain proceedings relevant to these two projects along Three Oaks Parkway. The Bonita 120 RPD is subject to a right-of-way taking for Three Oaks Parkway, while the Bonita 30 RPD is subject to two takings - a right-of-way taking by Lee County DOT, and a 10-acre taking by FDOT for a water management pond.

**Hendry County Fixed-Term General Services Contract, Hendry County, FL** – In charge of project team providing general planning, engineering and survey support services to Hendry County. Contract requires close coordination with the Planning and Development Director in conducting application reviews, and comprehensive plan and socio-economic research related to EAR-based amendments.

#### **Transportation**

**Big Coppitt Key PD&E Study, FDOT District 6; Monroe County, FL** – facilitated public involvement program for study of roadway improvements on US Highway 1 through Big Coppitt Key, 12 miles outside of Key West. Used community advisory

**Lower Matecumbe PD&E Study, FDOT District 6; Monroe County, FL** – responsible for public involvement and land use elements of a roadway improvement study for five miles of US Highway 1 in Islamorada. Duties included scheduling, organizing and facilitating meetings, designing and developing the project website, newsletters and press releases.

**Sombrero Beach PD&E Study, FDOT District 6; Monroe County, FL** – responsible for the management of a public involvement program and landscape design elements for study of roadway improvements on major arterial in Marathon.

**Key West International Airport Mosquito Ditch Improvements, Wetland Mitigation Design and Permitting; Monroe County, FL** – responsible for environmental permitting, impact minimization, and wetland mitigation. Duties included wetland delineation, ERP application, and development of the wetland mitigation plan.

#### **Environmental Planning**

**City of Key West Mooring Field Seagrass Monitoring Project; Monroe County, FL** – Managed seagrass monitoring project at the Key West Mooring Field that investigated potential shading impacts from moored boats. Duties included photographic documentation of monitoring stations over time, and collection of seagrass density and shoot-count data. Involved in project design and implementation of all phases, including the coordination of field monitoring and preparation of reports.

**Electric Transmission Line Replacement Environmental Compliance Monitoring; Monroe County, FL** – Member of team conducting environmental compliance monitoring of new electric tie-line poles being installed in wetland and submerged habitats between Coppitt Key and Key Haven. Duties included confirmation of pre-construction conditions; onsite inspections to assure impacts do not exceed limits established in environmental permits, and long-term monitoring to document post-construction recovery. In charge of field data collection and report generation.

**Key West Citizen Property Expansion – Wetland Mitigation Design and Permitting; Monroe County, FL** – Successfully completed environmental permitting, impact minimization and wetland mitigation. Duties included wetland delineation, ERP application, wetland restoration design, and ongoing monitoring.

**S. Roosevelt Boulevard Seawall Repairs – Seagrass Monitoring; Monroe County, FL** – Conducted field data collection and photography, updated CAD drawings showing proximity of seagrass beds to seawall construction area, documented seagrass impacts for assessment of mitigation requirements, and prepared reports.

**Smathers Beach Seagrass Mitigation Monitoring; Monroe County, FL** – Member of team conducting field monitoring of seagrass mitigation project for the City of Key West. Roles include plotting and establishing monitoring quadrants, collecting required data, and assisting in preparation of monitoring reports.



Reply to  
Russell P. Schropp  
Direct Fax Number 239.344.1535  
Direct Dial Number 239.344.1280  
E-Mail: russell.schropp@henlaw.com

October 28, 2009

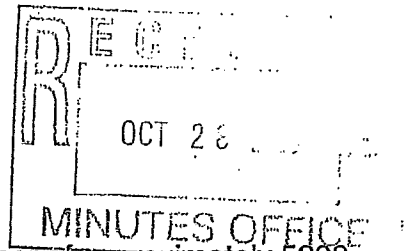
Chairman Ray Judah  
Lee County Board of County Commissioners  
2115 Second Street  
Fort Myers, FL 33901

Re: CPA2008-06, DRGR Plan Amendments

Dear Chairman Judah:

Our law firm represents FFD Land Co., Inc. ("FFD"), the owner of approximately 5208 acres of land located within unincorporated Lee County, south of Corkscrew Road immediately east of Alico Road ("the FFD Property"). This letter and my corresponding oral comments at the County Commission's transmittal hearing on October 28, 2009, are intended to provide FFD's comments, recommendations, and objections on the above-referenced plan amendment in accordance with Section 163.3184(1)(a), Florida Statutes.

I would initially note that a portion of the FFD Property is the subject of that certain application for rezoning to Mine Excavation Planned Development (MEPD), Case No. DCI2009-00001, presently pending before Lee County. This application seeks to rezone approximately 4652 acres (shown on the map attached hereto) of the FFD Property to MEPD in order to proceed with limerock mining and associated processing activities as presently allowed under the Density Reduction/Groundwater Recharge (DRGR) land use classification of the Lee County Comprehensive Plan (Lee Plan). FFD initially attempted to file a rezoning for mining in 2007, but the filing was delayed substantially by the County's moratorium on mining applications that was in effect between September 2007 and September 2008, and by the County's adoption of new Land Development Code amendments pertaining to mining in September 2008. In reliance on the new Land Development Code amendments adopted in September 2008, a pre-application meeting for this rezoning was held with Lee County staff on October 29, 2008 and the application for MEPD rezoning was submitted on January 6, 2009. The rezoning has been diligently pursued by FFD at a cost presently in excess of \$1.5 million. The remainder of the FFD Property which is not covered by the MEPD application is intended to remain in active agriculture.



Henderson, Franklin, Starnes & Holt, P.A.

FFD objects to this plan amendment on the grounds that it proposes to limit and restrict the ability to obtain approval for limerock mining in accordance with the existing DRGR land use classification. The existing DRGR land use classification expressly provides in Policy 1.4.5. that "[p]ermitted land uses include . . . natural resource extraction and related facilities." CPA2008-06 proposes to adopt new Goal 30 and its underlying Objectives and Policies relating to Southeast Lee County. Proposed Policy 30.1.1 will eliminate the ability to obtain rezoning for properties not shown on proposed Map 14 of the Future Land Use Map series of the Lee Plan. FFD objects to the restriction of its presently allowed uses under the Lee Plan without the provision of adequate compensation for the loss of rights and property value caused by this plan amendment.

Further, the Transferable Development Rights (TDR) proposal associated with the proposed plan amendment is inadequate and unworkable in its present form to provide meaningful alternatives or compensation to those landowners, including FFD, whose rights are substantially impacted by the plan amendment. Others will be better able to discuss the technical aspects and necessities of a successful TDR program. However, from FFD's perspective, the usefulness and fairness of the TDR proposal is severely limited by two concerns: (1) the receiving areas located along State Road 82 are legally constrained by existing concurrency issues that are likely to continue into the future; and (2) the TDR program does not even attempt to address or compensate for the loss of mining rights discussed above.

FFD also objects to the designation of the FFD Property as a Tier 2 Priority Restoration area without the provision for adequate compensation.

On behalf of FFD, I would respectfully object to the proposed plan amendment.

Sincerely,



Russell P. Schropp

RPS/rs

cc: Commissioner Brian Bigelow  
Commissioner Bob Janes  
Commissioner Tammy Hall  
Commissioner Frank Mann  
Mary Gibbs, AICP  
Paul O'Connor, AICP  
Matt Noble, AICP

Chairman Ray Judah  
Lee County Board of County Commissioners  
October 28, 2009  
Page 3

David M. Owen, County Attorney  
Donna Marie Collins, Assistant County  
Attorney  
Dennis E. Gilkey  
S. William Moore, Esq.



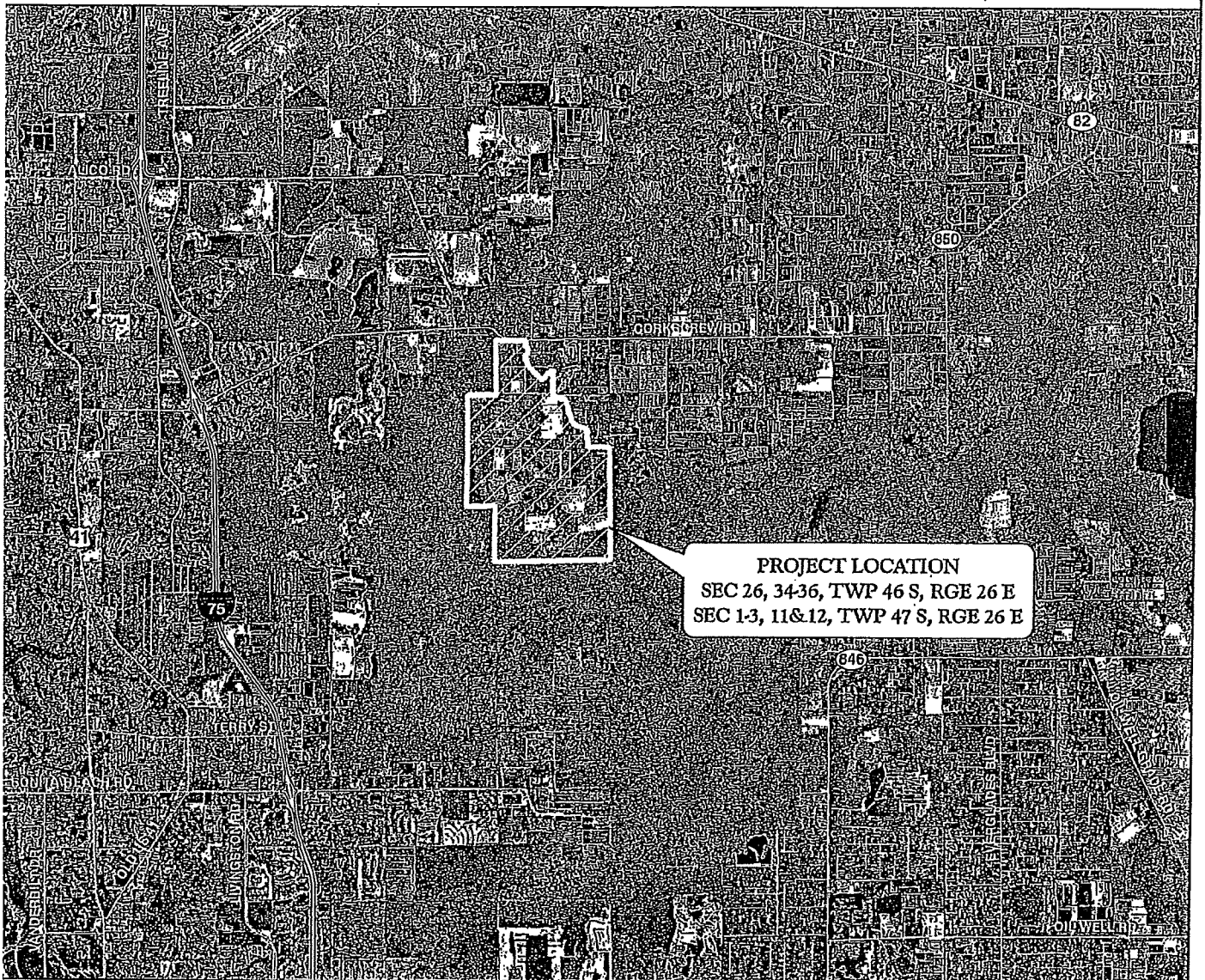
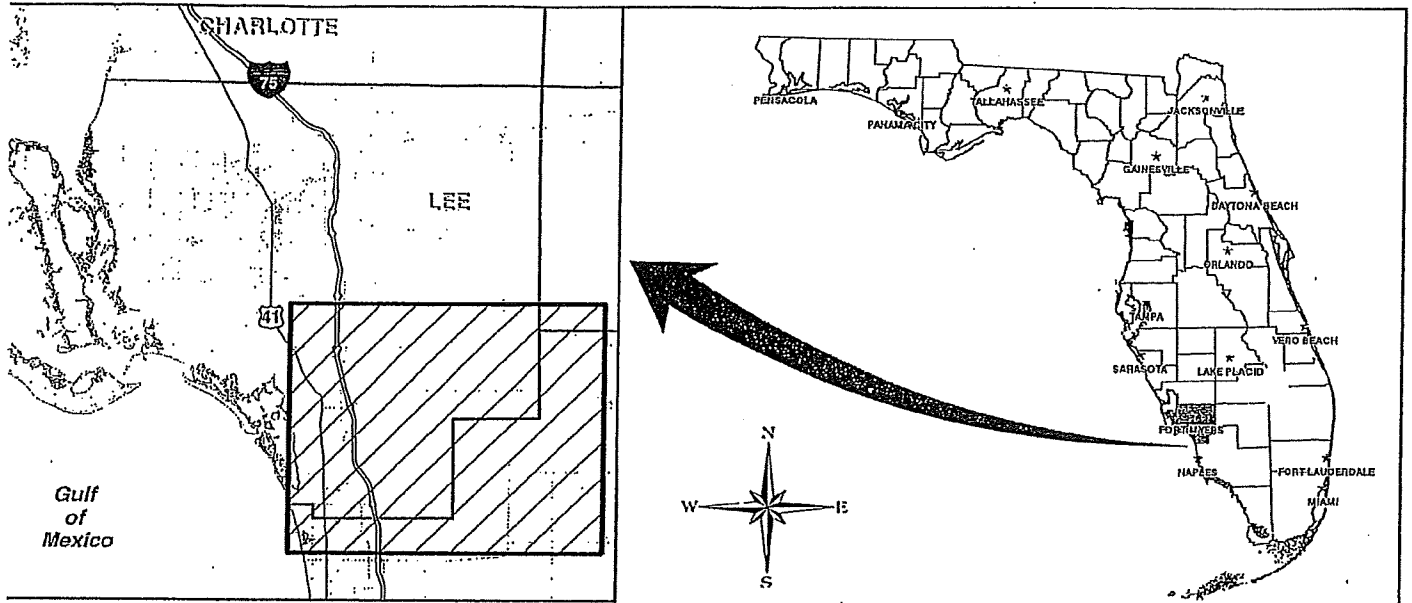


FIGURE 1. PROJECT LOCATION MAP  
FFD MPED

DRAWN BY	DATE
F.L.	11/12/08
REVIEWED BY	DATE
M.N.	11/12/08
REVISED	DATE



# DIVISION OF PLANNING

## MEMORANDUM



# LEE COUNTY

S O U T H W E S T F L O R I D A

**to:** Board of County Commissioners  
**from:** Paul O'Connor, AICP, Director  
**subject:** October 28, 2009 Comprehensive Plan Transmittal Hearing  
Status of Three Remaining Comp Plan Amendments  
**date:** October 23, 2009

The continuation of three proposed amendments, **Babcock, Buckingham, and the DR/GR**, and final action to officially transmit the 2008/2009 amendment package are scheduled for the October 28<sup>th</sup> public hearing, with October 29<sup>th</sup> as a backup day. Attached to this memo are the agenda and three documents with information regarding each amendment.

The first attachment is the latest draft of the staff recommended language for the new transportation policies addressing the impacts from the **Babcock Ranch Community** in Charlotte County. Through meetings between the developer, affected parties and county staff, revised policy language has been developed for the Board's consideration. In an attempt to reduce the concern that the amendment is in fact adopting specific roadway improvements, the tables that identified possible road way additions and improvements have been removed. Additional language has been added to emphasize the County's support of the proposed East-West connector as a priority and to stress transportation/mobility improvements as alternatives to simply widening roadways. This new language has also been attached to this memo.

Regarding the **Buckingham Community**, staff has exchanged language drafts and conducted several meetings with the Buckingham Community's representative to try to resolve the outstanding issues. Several areas of compromise have been identified and they have been incorporated in the second attached document as the Staff Recommended Language. Unfortunately, the community's latest proposal expanded rather than narrowed the list of issues. The community is proposing additional policies and continuing to propose policies that staff is not comfortable with transmitting. The remaining issues have been identified and the list is included in the second attached document. A revised Map 16, with an agreed upon revised Buckingham Community boundary, and staff recommended revisions to Table 1(b) the Year 2030 Allocation Table are also included.

The third amendment on the agenda will be the **Implementation of the DR/GR Study**. On October 26<sup>th</sup> at a Board Workshop, the consultants will present the components of the proposal and respond to Board questions. The third attachment to this memo is a revised DR/GR Map 17, the proposed "Rural Residential" overlay showing revised Mixed-Use Communities for the Fountains and the Ginn properties.

As always, I will adjust my schedule to meet with you to discuss any or all of the proposed amendments prior to the public hearings at your convenience.

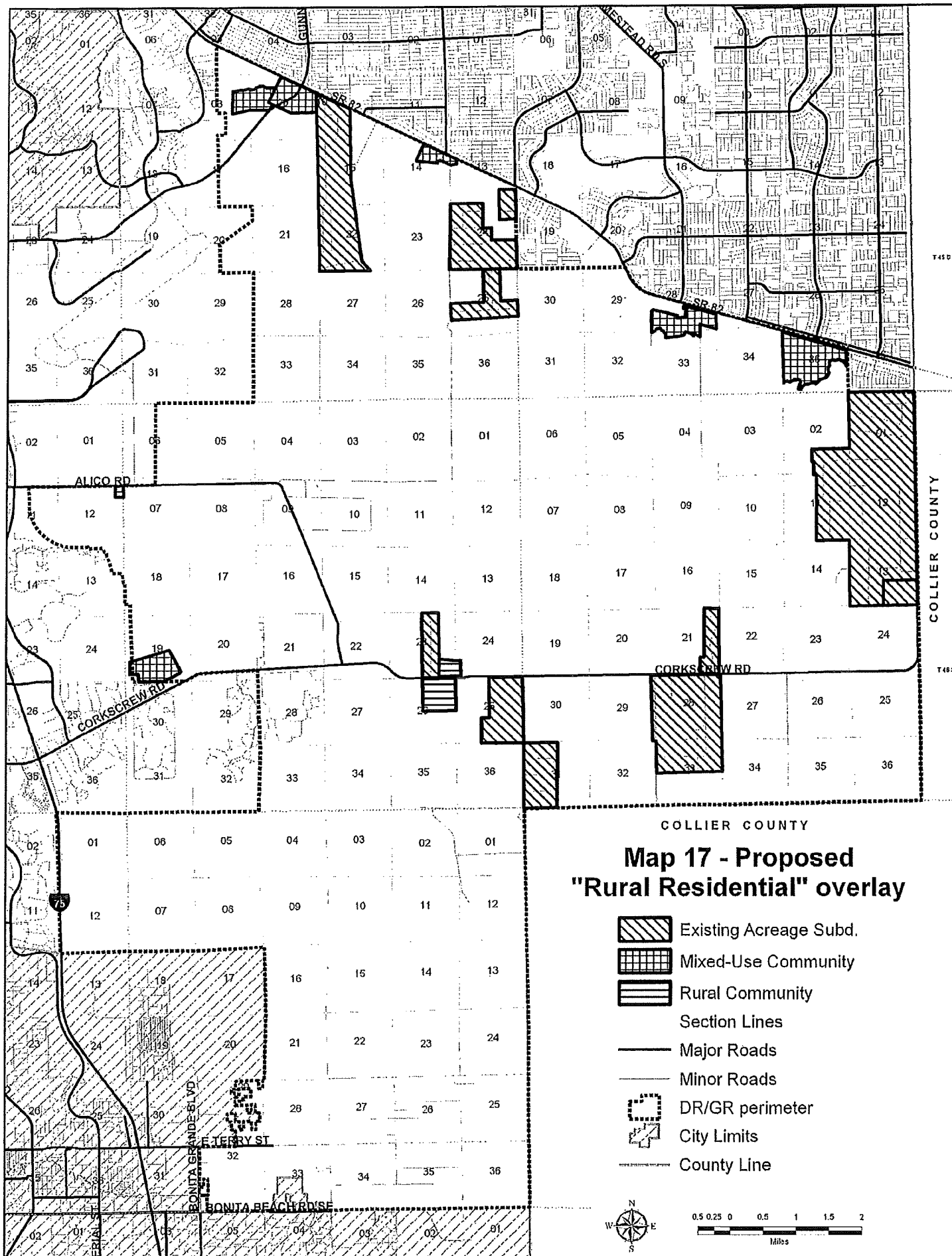
**CONTINUED  
2008/2009 REGULAR LEE PLAN AMENDMENTS  
TRANSMITTAL HEARING**

**OCTOBER 28, 2009, 9:30 A.M.**










**COMMISSION CHAMBERS  
2120 MAIN STREET**

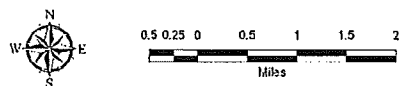
**AGENDA**

- 1. Call to order**
- 2. Administrative Agenda**
  - A. CPA2006-08 – Babcock Ranch Community**
  - B. CPA2007-49 – Buckingham Community Plan Update**
  - C. CPA2008-06 – Implement DR/GR Study**
- 3. Motion to Transmit 2008-2009 Round of Comprehensive Plan Amendments to the Florida Department of Community Affairs**
- 4. Motion to Adjourn**



**Map 17 - Proposed  
"Rural Residential" overlay**

-  Existing Acreage Subd.
-  Mixed-Use Community
-  Rural Community
-  Section Lines
-  Major Roads
-  Minor Roads
-  DR/GR perimeter
-  City Limits
-  County Line



**Miller, Janet**

---

**From:** Daniel H. Cox [dhcox@gtcom.net]  
**Sent:** Friday, December 11, 2009 3:02 PM  
**To:** Miller, Janet  
**Subject:** Resolution supporting 10-1  
**Attachments:** Resolution 2009-12.pdf

Thank you for your helpful information. Attached is the District's resolution we are submitting as comments to DCA.

Dan

Daniel H. Cox, P.A., Attorney at Law  
P.O. Drawer CC  
206 West 6th Street  
Carrabelle, FL 32322

Telephone: (850) 697-5555  
Facsimile: (850) 697-2171

dhcox@gtcom.net

RESOLUTION 2009-12

A RESOLUTION OF THE BOARD OF SUPERVISORS OF  
THE STONEYBROOK COMMUNITY DEVELOPMENT  
DISTRICT SUPPORTING THE FRAMEWORK FOR  
DENSITY REDUCTION/GROUNDWATER RESOURCE  
AREA COMPREHENSIVE PLAN AMENDMENTS AS  
DAFTED BY DOVER KOHL AND MODIFIED BY LEE  
COUNTY STAFF, SETTING AN EFFECTIVE DATE

RECITALS

A. Lee County, Florida is considering transmittal of Comprehensive Plan Amendments drafted by Dover Kohl and modified by Lee County Staff pertaining to the Framework for the Density Reduction/Groundwater Resource designated areas on the Lee County Future Land Use Map.

B. Many civic organizations and stakeholders have expressed support for the Framework Amendments and have requested the support of the local communities affected by the Framework Amendments.

C. The Stoneybrook Community Development District wishes to express its support for the Framework Amendments.

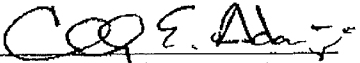
Now therefore, be it resolved that:

1. The Board of Supervisors hereby expresses its support for the Framework Amendments, specifically:
  - a. Staff's recommendation for Future Land Use Element Policies 30.1, Goal 10 and Map 14, creating a future limerock mining overlay, including Area B in the Amended Map 14, the "Future Limerock Mining Overlay" which contains the eastern 240 acres of the Galvano Property as recommended in the July 17, Staff Report.
  - b. Dover Kohl and staff's definition of historic levels for surface and ground water within FLUE Policy 1.4.5 and Map 24.
  - c. Staff's recommendation to remove rural community designation from the Edison Farms site within the Dover Kohl Report Figure 3 and recommend further review of the feasibility for the rural community designation within FLUE Objective 3.3.
  - d. Recommendations to extinguish density from mine pits and to require density from remaining mine acreage to be extinguished unless transferred to an eligible property in accordance with policy 30.3.3.

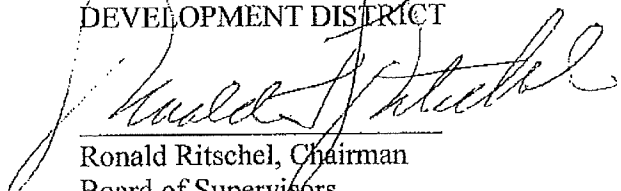
- e. Recommendations to restrict fill dirt pits within the DR/GR to the allowed mining areas of Map 14, the Future Limerock Mining Overlay.
  - f. Deletion of Conservation and Coastal Management Element Policy 114.1.2.1 and acknowledgement of Lee County's Obligation to Apply the Lee Plan's Wetlands Goals, Objectives and Policies.
  - g. Inclusion of Mixed Use Communities along SR82 and Incorporation of the designation within the 2035 Long Range Transportation Planning Process and limitation of the allowable increase in units from TDR's within the DR/GR to 6000 units.
  - h. Designation of the Priority Restoration Overlay as designated within the FLUE Policy 30.2 and Map 25.
  - i. Inclusion of language that requires minimum standards for zoning or development order approvals for mines and for all required monitoring reports within FLUE Policies 10.2.6 and 10.2.7.
  - j. Inclusion of language in Policy 30.2.3 to provide a county commitment to seek funding and or other Government's approval for acquisition, protection and restoration of the lands within the Priority Restoration Areas as depicted on the Proposed Amendment of Page 4 of Map 1.
2. Staff is directed to transmit a copy of this Resolution to Lee County, and upon transmittal of the Proposed Amendments to the Department of Community Affairs.

So Resolved, on this the 15<sup>th</sup> day of September, 2009.

ATTEST:

  
Chesley E. Adams, Jr., Secretary

STONEBROOK COMMUNITY  
DEVELOPMENT DISTRICT

  
Ronald Ritschel, Chairman  
Board of Supervisors



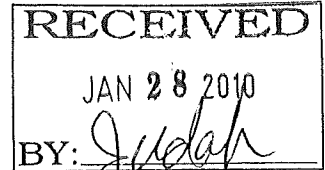
STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST  
Governor

THOMAS G. PELHAM  
Secretary



January 24, 2010

The Honorable Ray Judah, Chairman  
Lee County Board of County Commissioners  
Post Office Box 398  
Fort Myers, Florida 33902-0398

Dear Chairman Judah:

The Department forwarded to Lee County its review of the proposed Comprehensive Plan Amendment, Lee County DCA No. 10-1, on January 15, 2010. Please attach the enclosed comments, from the President of the Concerned Citizens Bayshore Community, Inc, with the Department's Objections, Recommendations and Comments Report as part of the public record.

If you, or your staff, have any questions please contact Scott Rogers, Principal Planner, at (850) 922-1758, or Brenda Winningham, Regional Planning Administrator, at (850) 487-4545.

Sincerely,

Scott Rogers  
Principal Planner

Enclosures: Citizen Comments

cc: Ken Heatherington, Executive Director, Southwest Florida Regional Planning Council  
Paul O'Connor, AICP, Lee County Planning Director



Suzanne Lex /DCA/FLEOC  
01/26/2010 08:51 AM

To Steveb239@aol.com  
cc  
bcc

Subject Fw: Babcock Amendment to the Lee Plan

We are committed to maintaining the highest level of service and we value your feedback . Please complete our Customer Service Survey by visiting <http://www.dca.state.fl.us/CustomerServiceSurvey/>. However, if you require direct assistance or a response, please visit <http://www.dca.state.fl.us/contactus/>.

Affordable, quality health insurance coverage is now available for any uninsured Floridians ages 19-64. To learn more, visit [www.CoverFloridaHealthCare.com](http://www.CoverFloridaHealthCare.com).

Florida has a broad public records law and all correspondence , including email addresses, may be subject to disclosure.

----- Forwarded by Suzanne Lex/DCA/FLEOC on 01/26/2010 08:49 AM -----

Suzanne Lex /DCA/FLEOC  
01/21/2010 11:15 AM

To Scott Rogers/DCA/FLEOC  
cc

Subject Fw: Babcock Amendment to the Lee Plan

We are committed to maintaining the highest level of service and we value your feedback . Please complete our Customer Service Survey by visiting <http://www.dca.state.fl.us/CustomerServiceSurvey/>. However, if you require direct assistance or a response, please visit <http://www.dca.state.fl.us/contactus/>.

Affordable, quality health insurance coverage is now available for any uninsured Floridians ages 19-64. To learn more, visit [www.CoverFloridaHealthCare.com](http://www.CoverFloridaHealthCare.com).

Florida has a broad public records law and all correspondence , including email addresses, may be subject to disclosure.

----- Forwarded by Suzanne Lex/DCA/FLEOC on 01/21/2010 11:12 AM -----



Steveb239@aol.com  
12/07/2009 01:05 PM

To Suzanne.Lex@dca.state.fl.us  
cc

Subject Babcock Amendment to the Lee Plan

DCA  
Suzanne Lex:

As president of Concerned Citizens Bayshore Community, Inc. (CCBC) I am writing to inform you that

we are strongly opposed to adoption of the Babcock Ranch Community Amendment to the Lee County Comprehensive Plan. I know you've spoken to our Research Director, Karen Kamener, and she may send you additional information.

The Bayshore Community has a Bayshore Community Plan which was adopted unanimously by the Lee BOCC in January 2003 and is now part of the Lee Plan. The Bayshore Community is bounded by I-75 to the west, SR 31 to the east, the Caloosahatchee River to the south, and the Charlotte County line to the north. The Goal stated in the Bayshore Plan is: "To protect the existing rural residential, agriculture and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities, while excluding incompatible uses that are destructive to the character of this rural residential environment.". We believe that the Lee Plan Amendment conflicts with this Goal. Most people who live in our area are here to live in a rural area and don't want to become suburban Babcock or infill. We are opposed to adoption of the Babcock Amendment for the following reasons.

On an early draft version of the Bayshore Plan (on page 6 of the attachment) Objective 20.2 Transportation stated: "To protect and maintain the rural character of the Bayshore community, no new arterial or collector roads will be constructed nor existing collector roads widened or extended, with the exception of widening Bayshore Road in the future.". On page 20 under the Local Planning Agency Review it states "One local land use attorney representing the Babcock Florida Company stated that his client was not opposed to the Bayshore plan with exception of Objective 20.2.". I believe this is why, in part, the County required the language to be changed in the adopted version to: "All road improvements within the Bayshore Community considered by the County will address the community's goal to maintain its rural character and give preference to alternatives that allow existing roads to function at their current capacity." (The Lee Plan Amendment conflicts with this language too). Also, in Policy 20.2.3 it states: "If a need to extend Del Prado Boulevard east of I-75 through the Bayshore Community is demonstrated, the corridor evaluation must include alternatives to using the existing Nalle Grade Road alignment.". The key words are need demonstrated. My point is that the only need shown on the 2030 LRTP map in the Bayshore area is the Del Prado-Nalle Grade east-west corridor (contingent 2 lanes on the 2030 LRTP Highway Element Map) and this road would only be needed for the Babcock Ranch Development. Since Charlotte County has approved the Babcock Development they may have a need for a new east-west corridor in Charlotte County, but in Lee County no need has been demonstrated. We are concerned because in the transmitted Amendment in table 2(c) it lists a "New East-West Corridor (near county line)". If it's near the county line and is listed in the Lee Plan it seems likely it would be built in Lee County (on or near the existing Nalle Grade Road alignment) and be in conflict with the Bayshore Plan. Charlotte County approved the Babcock Ranch Community and Lee County has not, so we believe if a new east west corridor is needed it would be needed in Charlotte County and should therefore be in the Charlotte County Plan. Also, Policy 20.2.2 states: "Road capacity improvements needed within the Bayshore Community to serve demands generated outside the community will be designed to minimize the impacts on the community and its rural character." Yet table 2(d) shows at buildout the new east-west corridor at 4 lanes, SR 31 at 6-10 lanes, and Bayshore Road at 6-8 lanes through the Bayshore Community. Does this sound like the minimized impacts on the community and its rural character in Policy 20.2.2? With this Lee Plan Amendment there will be no rural Bayshore left.

We don't want to see Urban Sprawl in Charlotte County which will spill over into the Bayshore Community destroying our rural character. Please see the attached Memorandum from the Charlotte County Community Development Department. On the first page of the Memorandum it states: "Staff analyzed the proposed development and determined that the proposed Babcock plan amendment meets 9 of 13 primary indicators of Urban Sprawl.". It also says: "Staff has determined that approval of the development will promote Urban Sprawl in the East County."

I assume you are aware that the Sierra Club is petitioning the Department of the Interior and the U.S. Fish and Wildlife Service to designate critical habitat for the Florida Panther. The petition is attached. It states: "Although the panther has been listed as endangered since 1967, the Service has never established critical habitat for the species. This forty year delay effectively means that the Service has designated zero acres of habitat; this petition seeks to enlarge this insufficient designation.". The Babcock Ranch area is designated as Primary Dispersal/Expansion Area according to the map on page 22 of the Petition. On page 21, in regard to the habitat north of the Caloosahatchee River it states: "Importantly, much of this habitat is already being used by panthers. Telemetry data shows male panthers crossing the river into the Babcock-Webb and Fisheating Creek areas and dispersing north well into the Avon Park area.". We should not be building new cities out in the middle of panther habitat. We know as we widen

SR 31 and other roads more panthers will be killed. Other endangered and threatened species will also be severely impacted.

If you need more information or clarification on my points, please let me know.

Thank you,  
Steve Brodtkin



President CCBC Bayshore Community Plan.pdf CharlotteSprawl200ct202820Shao.pdf Supplemental\_Panther\_Petition.pdf

**CPA2001-09  
PRIVATELY SPONSORED  
AMENDMENT  
TO THE**

---

**LEE COUNTY COMPREHENSIVE PLAN**

---

**THE LEE PLAN**

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**BoCC Adoption Document**

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*Lee County Planning Division  
1500 Monroe Street  
P.O. Box 398  
Fort Myers, FL 33902-0398  
(941) 479-8585*

January 9, 2003

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2001-00009**

**Text Amendment**

**Map Amendment**

•	<b>This Document Contains the Following Reviews:</b>
•	<b>Staff Review</b>
•	<b>Local Planning Agency Review and Recommendation</b>
•	<b>Board of County Commissioners Hearing for Transmittal</b>
•	<b>Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report</b>
•	<b>Board of County Commissioners Hearing for Adoption</b>

STAFF REPORT PREPARATION DATE: April 18, 2002

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT:**

BAYSHORE STEERING COMMITTEE c/o Larry Frappier  
1901 Pine Echo Rd.  
North Fort Myers, FL 33917

**2. AGENT:**

Mike Roeder c/o Knott, Consoer, Ebelini, Hart & Swett, P.A.

**3. REQUEST:**

Amend the Future Land Use Element text of the Lee Plan to incorporate the recommendations of the Bayshore Steering Committee, establishing a Vision Statement, Goal and subsequent Objectives and Policies specific to the Bayshore Community.

## B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

**1. REVISED RECOMMENDATION:** Subsequent to the April 22 LPA public hearing, staff and the applicant discussed, on several occasions, revised language for the proposed Bayshore Lee Plan Amendment. After considering concerns raised at the March 25 and April 22 LPA public hearings, staff suggestions, and public comments on the proposal, the applicant submitted a revised Goal and Objective, and several new or revised policies. Staff generally supports the revisions as they are listed below. Old language that remains unchanged from the previous public hearings is shown underlined. New or revised language is shown double underlined or in strike thru. Language that was previously shown in strike-through has been omitted by the applicant and is not shown below. The strike-through language shown below is a result of staff recommendations for modification to the revised language submitted by the applicant. Contrary to the Local Planning Agency (LPA) recommendation, staff recommends that the following language be transmitted to the Florida Department of Community Affairs:

### VISION STATEMENT:

The Bayshore Community, bounded by I-75, SR 31, the Caloosahatchee River and Charlotte County, is predominantly a rural residential area of single family homes on large acreages, small horse farms, citrus groves, and plant nurseries, interspersed by some larger cattle grazing operations. There are also scattered single family subdivisions and mobile homes on smaller lots which provide for a full range of housing prices. There is limited urban infrastructure and commercial uses. By and large, the residents of Bayshore want to see this land use pattern maintained. The vision of the future would include slow but steady growth with the building of larger single family homes on 2 ½ to 5 acre tracts, as well as some higher density development in the Outlying Suburban category (i.e. up to two units per acre with proper zoning), and continued support for the infrastructure necessary for the owners and breeders of horses. The protection of environmental resources and the maintenance of a wholesome family atmosphere is desired, as well as the protection of existing agricultural and equestrian activities. One community project that could serve these ends would be the development of an equestrian park in the community.

**GOAL 20: BAYSHORE COMMUNITY.** To protect the existing rural residential, agricultural and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities, while excluding incompatible uses that are destructive to the character of this rural residential environment. For the purposes of this goal and related objectives and policies, the boundaries of the Bayshore Community will be I-75 on the west, SR 31 on the east, the Caloosahatchee River on the south and the Charlotte County line on the north.

**OBJECTIVE 20.1: LAND USE.** The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after {scrivener will insert effective date of policy, if adopted}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

**POLICY 20.1.1:** Retail commercial activity shall will be limited to the Interstate Interchange designation at Bayshore and I-75, plus minor commercial uses at the intersections of Nalle Road and Bayshore, SR 31 and Bayshore, and SR 31 and Old Bayshore. Non-retail commercial uses are permitted elsewhere consistent with the Lee Plan and the Land Development Code.

**POLICY 20.1.2:** "Minor" commercial will be as defined in the Lee Plan and will not include commercial stables or tack and feed stores. The existing 7.1 acre +/- retail commercial center at 10440 Bayshore Road and the .66 acre +/- retail commercial property at 19451 SR 31 will be deemed consistent with this Policy 20.1.1, but will not be permitted to expand beyond their existing building footprints:

**POLICY 20.1.3:** No new industrial activities or industrial rezonings are permitted.

**POLICY 20.1.4:** No new mining uses or commercial excavations are permitted.

**OBJECTIVE 20.2: TRANSPORTATION.** All road improvements within the Bayshore Community considered by the County will address the community's goal to maintain its rural character and give preference to alternatives that allow existing roads to function at their current capacity.

**POLICY 20.2.1:** Routine maintenance of existing County roads will be continued:

**POLICY 20.2.21:** Any expansion of the state arterial roadways should include physically-separated provisions for bicyclists/pedestrians.

**POLICY 20.2.32:** Road capacity improvements needed within the Bayshore Community to serve demands generated outside the community will be designed to minimize the impacts on the community and its rural character.

**POLICY 20.2.43:** If a need to extend Del Prado Boulevard east of I-75 through the Bayshore Community is demonstrated, the corridor evaluation must include alternatives to using the existing Nalle Grade Road alignment. The evaluation will address (but not be limited to) access, safety and community character issues. Alternatives will be presented at evening public workshops within the Bayshore community.

**OBJECTIVE 20.3: SEWER AND WATER.** Given the desire to maintain a low residential density, new central sewage service is not economically feasible and is discouraged north of Bayshore Road. Central water service for enhanced fire protection will be encouraged where economically feasible.

**POLICY 20.3.1:** Central sewage service will be encouraged for existing high density developments south of Bayshore Road and for new developments that are required to provide such service under the provisions of Standard 11.2 of the Lee Plan.

**POLICY 20.3.2:** No landowner will be required to connect to central sewer or water utilities or be assessed for same unless a threat to public health can be documented, or if a new development proposes an intensity that exceeds the thresholds in Standards 11.1 and 11.2 of the Lee Plan.

**OBJECTIVE 20.4: PARKS AND RECREATION.** The County will explore, with the support of the residents of Bayshore, the feasibility of establishing an equestrian park as the primary recreation facility for this community.

**POLICY 20.4.1:** The support of the Bayshore residents may include assistance with development and maintenance of such a recreation facility.

**2. ORIGINAL RECOMMENDATION (superseded):** Planning staff recommends that the Board of County Commissioners transmit the proposed amendment, with the modifications proposed by staff. Staff's recommended language is provided below, with recommended changes from the applicant's language highlighted in strike-thru or double underline format.

#### **VISION STATEMENT:**

The Bayshore Community, bounded by I-75, SR 31, the Caloosahatchee River and Charlotte County, is predominantly a rural residential area of single family homes on large acreages, small horse farms, citrus groves, and plant nurseries, interspersed by some larger cattle grazing operations. There are also scattered single family subdivisions and mobile homes on smaller lots which provide for a full range of housing prices. There is limited urban infrastructure and commercial uses. By and large, the residents of Bayshore want to see this land use pattern maintained. The vision of the future would include slow but steady growth with the building of larger single family homes on 2 ½ to 5 acre tracts, and continued support for the infrastructure necessary for the owners and breeders of horses. The protection of environmental resources and the maintenance of a wholesome family atmosphere is desired, as well as the protection of existing agricultural and equestrian activities. One community project that could serve these ends would be the development of an equestrian park in the community.

**GOAL 20: BAYSHORE COMMUNITY.** To protect the existing rural, agricultural and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities, while excluding incompatible uses, such as mining, that are destructive to the character of this rural residential environment. For the purposes of this goal and related objectives and policies, the boundaries of the Bayshore Community will be I-75 on the west, SR 31 on the east, the Caloosahatchee River on the south and the Charlotte County line on the north.

**OBJECTIVE 20.1:** The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after the adoption of this amendment *{scrivener will insert effective date of policy, if adopted}*, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.



POLICY 20.1.1: Retail commercial activity shall be limited to the Interstate Interchange designation at Bayshore and I-75, plus minor commercial uses at the intersections of Nalle Road and Bayshore, SR 31 and Bayshore, and SR 31 and Old Bayshore. Non-retail commercial uses are permitted elsewhere consistent with the Lee Plan and the Land Development Code.

POLICY 20.1.2: "Minor" commercial will be as defined in the Lee Plan and will not include commercial stables or tack and feed stores. In addition, The existing 7.1-acre +/- retail commercial center at 10440 Bayshore Road and the 0.66-acre +/- retail commercial property at 19451 S.R. 31 will be deemed consistent with this objective Policy 20.1.1, but will not be permitted to expand beyond its their existing building footprints.

POLICY 20.1.3: No new industrial activities or industrial rezonings are permitted.

POLICY 20.1.4: No new mining uses or commercial excavations is are permitted.

~~**OBJECTIVE 20.2: TRANSPORTATION.** To protect and maintain the rural character of the Bayshore community, no new arterial or collector roads will be constructed nor existing collector roads widened or extended, with the exception of the widening of Bayshore Road in the future. Public transportation expenditures shall be limited to routine maintenance and bike paths and/or bridle paths. New local roads may be constructed with private funds or municipal service taxing or benefit units.~~

~~**POLICY 20.2.1:** This objective does not preclude the widening of State Road 31 or I-75 since they are not entirely contained within the boundaries of the Bayshore Community Plan.~~

~~**POLICY 20.2.2:** The widening of arterial roads shall include provision for bike paths/sidewalks.~~

**OBJECTIVE 20.32: SEWER AND WATER.** Given the desire to maintain a low residential density, new central sewage service is not economically feasible and should be is discouraged north of Bayshore Road. Central water service for enhanced fire protection will be encouraged where economically feasible.

**POLICY 20.32.1:** Central sewage service will be encouraged for existing high density developments south of Bayshore Road, and for new commercial developments that require such service in the Outlying Suburban land use category that are required to provide such service under the provisions of Standard 11.2 of the Lee Plan.

**POLICY 20.32.2:** No landowner will be required to hook into connect to central sewer or water utilities or be assessed for same unless a threat to public health can be documented, or if a new development proposes commercial intensity that exceeds the thresholds provided in Standard 11.1 and 11.2 of the Lee Plan.

**OBJECTIVE 20.43: PARKS AND RECREATION.** The County will explore, with the support of the residents of Bayshore, the feasibility of establishing an equestrian park as the primary recreation facility for this community.

**POLICY 20.43.1:** The support of the Bayshore residents may include assistance with development and maintenance of such a recreation facility.

## **2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- The proposed amendments to the Lee Plan were initiated by a group of Bayshore residents who were concerned that the existing Lee Plan does not provide adequate protection of their rural lifestyle.
- One particular case, a proposed mine near the intersection of Nalle Road and Nalle Grade Road, made many Bayshore residents begin to question Lee County's existing land use policies.
- The Bayshore planning effort originated as a grass-roots effort by citizens of the Bayshore area who took an active interest in the County's current policies regarding land use issues in their community. The proposed amendments have been driven by the interests of the community.
- Currently, the Lee Plan contains few regulations that are specific to the Bayshore Community.
- The Board of County Commissioners has provided support to several community planning efforts in Lee County over the past year.
- The Bayshore Community planning process consisted of two public meetings, one on June 6<sup>th</sup>, 2001, and one on June 5<sup>th</sup>, 2002. The first meeting was attended by approximately 400 residents, at which time the proposed amendments were presented by the planning consultant to the residents. The residents in attendance voted on each proposed goal, objective, and policy, and all were found by the majority of people in attendance to be acceptable. The second meeting was attended by approximately 120 residents, at which time the revisions to the proposed amendments were presented by members of the committee to the residents. The language was approved by a majority of the residents.
- This community planning effort was fully funded by the residents of the Bayshore Community. The community received no financial support from the County in this planning effort.
- Mining uses and/or commercial excavations are incompatible with the rural residential character of the Bayshore Community.

## **C. BACKGROUND INFORMATION**

The proposed privately initiated plan amendment was formally submitted to staff on September 25, 2001. This amendment is a grass roots effort originating from the Bayshore Community. Staff believes that the Bayshore Community planning process originated as a result of a rezoning application that proposed to establish a

commercial mine near the intersection of Nalle Road and Nalle Grade Road. Many residents of the community opposed the mine on the basis that it was incompatible with the existing land uses in the area. During the course of the review of this mining application, the Bayshore residents began to believe that the existing Lee Plan did not effectively represent the interests of their particular community. The mining case developed a general interest in zoning and land use planning issues in the Bayshore area, and prompted the community to review the existing planning and zoning regulations. The Bayshore Community did not believe that the existing Lee Plan did enough to protect their rural lifestyle, and decided to initiate this amendment to the Lee Plan in order to add specific goals, objectives, and policies that are specific to the Bayshore area.

## **PART II - STAFF ANALYSIS**

### **A. STAFF DISCUSSION**

The proposed privately-initiated amendment application was received by the County on September 25, 2001. The amendment is text-only, and is not proposing any changes to the Future Land Use Map. Planning staff provided copies of the proposed amendment and requested comments from various County departments, including:

- Public Safety
- EMS Division
- Lee County Sheriff
- Natural Resources Division
- Lee Tran
- Parks and Recreation
- School District of Lee County
- Lee County Department of Transportation
- Development Services Division
- Environmental Sciences Division
- Lee County Port Authority
- Economic Development
- Public Works Department
- Utilities Division
- Zoning Division
- Bayshore Fire District

Due to the limited scope of the proposed amendments, many of the above-listed agencies did not have any specific comments concerning the Bayshore Plan, but for those that did comment, staff has incorporated their comments into the staff analysis.

Staff's review of the proposed amendment focuses on the vision statement and the subsequent goals, objectives, and policies, and how they fit in with the existing Lee Plan and other County regulations

### Lee County DOT Review

Lee County Department of Transportation (LCDOT) has reviewed the proposed Bayshore Community Plan and has provided written comments dated April 17, 2002 (see Attachment 1). LCDOT had indicated a concern about proposed Objective 20.2, which attempts to prohibit any future arterial or collector road widenings or expansions, other than the widening of Bayshore Road in the future. Lee County DOT has identified the following roads that would be subject to this objective:

#### Arterials

Bayshore Road  
State Road 31

#### Major Collectors

Leetana Drive (SR 78 to Pritchett Parkway)  
Nalle Grade Road (Slater Road to Nalle Road)  
Nalle Road (SR 78 to Nalle Grade Road)  
Pritchett Parkway (Leetana Drive to Rich Road)  
Rich Road (Slater Road to Pritchett Parkway)

#### Minor Collectors

Deal Road (Durrance Road to Old Bayshore Road)  
Durrance Road (SR 78 to Deal Road)  
Old Bayshore Road (SR 78 to SR 31)  
Palm Creek Drive (SR 78 to Deal Road)

None of these roads have been identified for improvement in the latest version of the 2020 Financially Feasible Transportation Plan, but the extension of Nalle Grade Road west to a new interstate interchange and the Del Prado Boulevard extension has been identified as a need by 2020, if additional funds are available. Also, an extension of Nalle Grade Road east to State Road 31 has been suggested as something to consider in a proposed corridor alignment study for the Del Prado extension and new interchange. The eastern extension of Nalle Grade Road would improve area traffic circulation, access to a new interstate interchange, and hurricane evacuation capacity. Neither the eastern or western extensions of Nalle Grade would be possible if the proposed Objective 20.2 is adopted. This objective limits the County's ability to explore all options in developing a regional road network.

Objective 20.2 limits road improvements to "routine maintenance." LCDOT questions what is meant by "routine maintenance" in this objective. The Bayshore community and Lee County might differ on their opinion of what constitutes routine maintenance of a road. LCDOT also disagrees with the statement in Objective 20.2 that implies that public transportation funds will be spent on bridle paths, noting that County transportation funds have never been and likely never will be spent to develop bridle paths.

LCDOT has recommended that Objective 20.2, Policy 20.2.1 and 20.2.2 be deleted from the proposed community plan. Planning staff agrees with this recommendation and believes that this objective and policies, if

adopted, would hinder the County's long range transportation planning efforts for the Bayshore Area and for the entire county.

### **Fire District Review**

The Bayshore Fire Protection and Rescue Service District has reviewed the proposed Bayshore Community Plan and has provided written comments dated December 13, 2001 (see Attachment 2). The District had a concern about the proposed new objective (Objective 20.2) that would preclude the construction of new arterial or collector roads, and the expansion of existing collector roads. District staff was concerned that a limitation on road improvements would hinder their ability to function effectively as a fire district. The response times of the fire crews are directly impacted by the condition of the roads on which their fire trucks travel. For this reason, the District specifically opposes any new policies that would prohibit the County from making planned road improvements, as needed.

### **School District Review**

The School District of Lee County has reviewed the proposed Bayshore Community Plan and has provided written comments dated December 6, 2001 (see Attachment 3). According to district staff, the proposed plan amendments would not have any significant impact on the School District's ability to address the educational needs of the community.

## **Planning Staff Comments on Proposed Goals, Objectives, and Policies**

### **VISION STATEMENT:**

The Bayshore Community, bounded by I-75, SR 31, the Caloosahatchee River and Charlotte County, is predominantly a rural residential area of single family homes on large acreages, small horse farms, citrus groves, and plant nurseries, interspersed by some larger cattle grazing operations. There are also scattered single family subdivisions and mobile homes on smaller lots which provide for a full range of housing prices. There is limited urban infrastructure and commercial uses. By and large, the residents of Bayshore want to see this land use pattern maintained. The vision of the future would include slow but steady growth with the building of larger single family homes on 2 ½ to 5 acre tracts, and continued support for the infrastructure necessary for the owners and breeders of horses. The protection of environmental resources and the maintenance of a wholesome family atmosphere is desired, as well as the protection of existing agricultural and equestrian activities. One community project that could serve these ends would be the development of an equestrian park in the community.

**Staff Comment:** Staff is in agreement with the applicant on the proposed Vision Statement.

**GOAL 20: BAYSHORE COMMUNITY.** To protect the existing rural, agricultural and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities, while excluding incompatible uses, such as mining, that are destructive to the character of this rural residential environment. For the purposes of this goal and related objectives and policies, the boundaries of the Bayshore

Community will be I-75 on the west, SR 31 on the east, the Caloosahatchee River on the south and the Charlotte County line on the north.

**Staff Comment:** Staff does not believe that mining should be specifically called out as being an incompatible use. There are many other incompatible uses that could be destructive to the character of the existing rural residential environment. Mining has been addressed through proposed Policy 20.1.4, which prohibits new mining uses and commercial excavations. The specific reference to mining in Goal 20 is duplication of Policy 20.1.4, and staff recommends that it be deleted as shown above.

**OBJECTIVE 20.1:** The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after the adoption of this amendment {scrivener will insert effective date of policy, if adopted}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

**Staff Comment:** For purposes of clarity, staff believes that Objective 20.1 should reference the effective date of the objective rather than the adoption of this amendment. If the objective is adopted, staff will insert the effective date into the policy as shown above. Also, once the amendment is adopted, it can no longer be referred to as an amendment in the Objective language, but should instead be referred to as an objective within the Lee Plan. Staff recommends the changes shown above.

**POLICY 20.1.1:** Retail commercial activity shall be limited to the Interstate Interchange designation at Bayshore and I-75, plus minor commercial uses at the intersections of Nalle Road and Bayshore, SR 31 and Bayshore, and SR 31 and Old Bayshore. Non-retail commercial uses are permitted elsewhere consistent with the Lee Plan and the Land Development Code.

**Staff Comment:** Staff has no comments on this policy, and agrees with the proposed language.

**POLICY 20.1.2:** "Minor" commercial will be as defined in the Lee Plan and will not include commercial stables or tack and feed stores. In addition, The existing 7.1-acre +/- retail commercial center at 10440 Bayshore Road and the 0.66-acre +/- retail commercial property at 19451 S.R. 31 will be deemed consistent with this objective Policy 20.1.1, but will not be permitted to expand beyond its their existing building footprints.

**Staff Comment:** This policy is simply a reflection of the existing Lee Plan provisions under Goal 6. It restates what Goal 6 already says and adds a specific reference to make existing retail property consistent with the proposed policy 20.1.1. Staff generally agrees with this policy, but there are a couple of items that should be clarified. With regard to the reference to the property at 10440 Bayshore Road, staff recommends adding a specific reference to the size of this parcel (7.1 acres) because it is possible that more land could be added to this parcel while maintaining the same street address. Staff simply wants additional assurance that this particular development parcel will not expand in the future. Staff has also discovered another existing retail commercial property at 19451 S.R. 31 that is used as a convenience store. This property is in the DR/GR land use category

and is zoned C-1. Staff believes that this property should also be deemed consistent with Policy 20.1.1 since it is pre-existing. Additionally, staff believes that it is somewhat confusing to say that the property will be deemed consistent with "this objective," because it seems like the policy should actually refer to proposed Policy 20.1.1, and not Objective 20.1. Staff recommends modifying this reference as shown above.

**POLICY 20.1.3: No new industrial activities or industrial rezonings are permitted.**

**Staff Comment:** This proposed policy will have implications for existing property in the Bayshore area. According to the County's existing land use data (see Attachment 4), there is one parcel in the Bayshore community that contains an industrial use. This parcel is about 2 acres in size and contains an open-air warehouse that is used for the wholesale of produce. The property is zoned AG-2 and is located in the Rural land use category. If this use is truly industrial in nature, then its expansion would be prohibited by this policy.

The only other area in the Bayshore Community where industrial uses would be allowed is within the General Interchange area at Bayshore Road and I-75. The General Interchange land use category allows limited light industrial uses, which would now be prohibited by this new policy. There is no existing industrial zoning in these areas, however, so a rezoning would be required in order to establish any new industrial uses. Such a rezoning would be prohibited by this new policy. There is a potential for conflict between Policy 20.1.3 and the General Interchange descriptor policy (Policy 1.3.2). The proposed policy may change development expectations for property owners at the Bayshore/I-75 interchange, in that the light industrial uses currently allowed by the Lee Plan in this area would now be precluded by this policy. Staff believes that the proposed Policy 20.1.3 would control in this case because it is the more restrictive policy and it only applies to a specific sub-area of the County. Staff is in agreement with the applicant on the proposed policy.

**POLICY 20.1.4: No new mining uses or commercial excavations is are permitted.**

**Staff Comment:** Staff is generally in agreement with this proposed policy, but is recommending minor changes to the applicant's language as shown above. Staff does not believe it was the applicant's intent for this policy to shut down existing commercial excavations, therefore staff modified the policy so that it prohibits *new* commercial excavations.

~~**OBJECTIVE 20.2: TRANSPORTATION.** To protect and maintain the rural character of the Bayshore community, no new arterial or collector roads will be constructed nor existing collector roads widened or extended, with the exception of the widening of Bayshore Road in the future. Public transportation expenditures shall be limited to routine maintenance and bike paths and/or bridle paths. New local roads may be constructed with private funds or municipal service taxing or benefit units.~~

**Staff Comment:** As stated previously in this report, DOT staff strongly opposes this objective. Staff believes that a prohibition on new road construction and existing road widenings or extensions has several potential negative impacts for the County. This policy limits County-wide and regional transportation planning efforts because of the desires of one sub area of the county to limit future growth. The prohibition on road network improvements also impacts the fire district's ability to provide timely service to its citizens. The proposed

objective also prevents future road improvements that would improve hurricane evacuation times for the County. Additionally, staff anticipates confusion over what would constitute a routine maintenance project. This has not been defined. Also, the County does not, and likely will never, expend transportation funds for the development of bridle paths. For these reasons, LCDOT staff recommend the deletion of the proposed Objective 20.2.

~~**POLICY 20.2.1:** This objective does not preclude the widening of State Road 31 or I-75 since they are not entirely contained within the boundaries of the Bayshore Community Plan.~~

**Staff Comment:** Staff does not oppose this policy by itself, but given the opposition to the parent objective, staff is also recommending the deletion of Policy 20.2.1.

~~**POLICY 20.2.2:** The widening of arterial roads shall include provision for bike paths/sidewalks.~~

**Staff Comment:** Once again, staff does not oppose this policy by itself, but given the opposition to the parent objective, staff is recommending the deletion of Policy 20.2.2.

**OBJECTIVE 20.32: SEWER AND WATER.** Given the desire to maintain a low residential density, new central sewage service is not economically feasible and should be discouraged north of Bayshore Road. Central water service for enhanced fire protection will be encouraged where economically feasible.

**Staff Comment:** Staff is generally in agreement with the proposed objective, but recommends the minor modification shown above in order to make the intent of the objective more clear. It should also be noted that there are some areas north of Bayshore Road that are currently connected to central sewer service. Staff therefore recommends modifying the proposed objective to state that *new* central sewage service is discouraged north of Bayshore Road. This change would account for the existing areas on central sewer.

**POLICY 20.32.1:** Central sewage service will be encouraged for existing high density developments south of Bayshore Road, and for new commercial developments that require such service in the Outlying Suburban land-use category that are required to provide such service under the provisions of Standard 11.2 of the Lee Plan.

**Staff Comment:** Standard 11.2 of the Lee Plan requires that central sewer service be provided for any residential development that exceeds 2.5 dwelling units per acre, and any commercial or industrial development that generates more than 5,000 gallons of sewage per day. The Outlying Suburban areas of the Bayshore community would only allow up to 2 dwelling units per acre under the existing Lee Plan, which would not trigger the central sewer requirement. New industrial developments are not permitted under the proposed Bayshore Plan, so industrial developments will not trigger the central sewer requirement. New commercial development, however, might exceed the threshold for central sewer. Staff believes that the applicant recognized this fact, and attempted to account for this situation in the proposed policy. Staff recommends taking the applicant's language a step further, and adding a specific reference to Standard 11.2 in order to make it clear that central sewer will be *required* for any development that exceeds the thresholds contained in Standard 11.2. Without this additional language, it may appear that the County simply *encourages* central sewer service in these areas, when in fact,



it may be required under Standard 11.2. Staff recommends the changes to the applicant's language as shown above.

**POLICY 20.32.2:** No landowner will be required to ~~hook into~~ connect to central sewer or water utilities or be assessed for same unless a threat to public health can be documented, or if a new development proposes commercial intensity that exceeds the thresholds provided in Standard 11.1 and 11.2 of the Lee Plan.

**Staff Comment:** Once again, staff wants to ensure that the existing Standard 11.1 for water and Standard 11.2 for sewer will not be superceded by this policy. Staff understands the intent of the policy that existing landowners will not be required to hook into new water or sewer lines, but staff believes it should be made clear that, if new development is proposed which exceeds the thresholds contained in Standards 11.1 and 11.2, and central water and sewer are available, the new development will be required to hook into the system. As stated previously, there are no areas in the Bayshore Community that would allow residential densities that would exceed the threshold. Staff recommends that additional language be added to the proposed policy as shown above.

**OBJECTIVE 20.43: PARKS AND RECREATION.** The County will explore, with the support of the residents of Bayshore, the feasibility of establishing an equestrian park as the primary recreation facility for this community.

**Staff Comment:** Staff has no comment or objection to the inclusion of the proposed objective.

**POLICY 20.43.1:** The support of the Bayshore residents may include assistance with development and maintenance of such a recreation facility.

**Staff Comment:** Staff has no comment or objection to the inclusion of the proposed policy.

## **B. CONCLUSIONS**

Staff has reviewed the proposed Bayshore amendment, and is in agreement with the majority of the new goals, objectives, and policies. Staff believes that most of the new regulations generally support the community vision as stated in the proposed Vision Statement. In some cases, staff thought that certain policies should be clarified or reworded in order to simplify future implementation, and these clarifications have been proposed in strike-out and double underline form in Part I Section B of this report. With regard to the proposed transportation objective and policies, staff is strongly opposed to the adoption of any Lee Plan regulations that would limit the County's ability to develop a sound regional road network. Staff believes that Objective 20.2 and its subsequent policies would hinder local and regional transportation objectives, and should not be transmitted. Staff believes that the balance of the proposed amendment should be transmitted as modified by staff.

## **C. STAFF RECOMMENDATION**

Staff recommends that the Board of County Commissioners transmit the proposed amendment with staff's recommended language as shown in Part I, Section B.1. of this report.

### PART III - LOCAL PLANNING AGENCY REVIEW

DATE OF PUBLIC HEARING: March 25, 2002

#### A. LOCAL PLANNING AGENCY REVIEW

The Local Planning Agency held an informational hearing on this date, no staff report was presented and no formal action took place by the LPA. The stated purpose of the hearing was to brief the LPA members on the status of the request, allow the applicant to discuss the proposal, and to allow the public to have the opportunity to provide comments concerning the proposed language. Planning staff introduced the proposed request to amend the Future Land Use element of the Lee Plan. Staff stated that the request was being made by the Bayshore Steering Committee and that their request is to establish a new goal and subsequent objectives and policies. Staff distributed revised language that had recently been submitted by the applicant. Staff noted that the Bayshore Community had been incorporated into Lee Plan Map 16 in the previous amendment cycle. Staff also stated that staff had met with members of the Steering Committee a week or so in advance of the LPA hearing to continue discussing the proposed language. Staff informed the LPA that staff had suggested to the Steering Committee that it would be appropriate to include a vision statement as one was not included with the previous amendment or with this proposal. Staff indicated that the formal staff report would be provided for the next months LPA public hearing.

The applicant's consultant provided a brief presentation to the LPA. This consultant provided background information to the LPA, he stated that the Steering Committee spent last summer developing a community plan for their area, which is privately funded. He also noted that the County has looked at Bayshore in the past. He provided that there were very extensive studies of the Bayshore area in 1982 and in 1987 and that these were briefly covered in the background report attached to the request. He noted that all of the "previous studies have pointed in the same direction, and that is that this is a very rural, low density type of area, has serious flooding problems, and that the people that live there want to keep it that way." The consultant then proceeded to review recent language changes as a result of several discussions with planning and transportation staff. The consultant noted the similarities to the Buckingham plan and that the amendment was keeping the land use categories and densities the same as they are today. He also noted that mining and commercial excavations were not appropriate in the Bayshore community as the area had mostly been divided into ten acre, five acre, and two and a half acre residential tracks. The consultant further provided that Section 20.2 caused some controversy because of the extension proposed for Nalle Grade east of 31. He stated that the community believes this extension is not needed and would cause serious dysfunction to the area. He noted that the community has no objection to the extension of Del Prado Boulevard to I-75, jut to a continued extension to the east.

One member asked for a clarification concerning proposed Objective 20.1 concerning "overriding public necessity" and "super majority." The consultant responded that its not a super majority, it requires votes by three commissioners. This LPA member also asked if the County had undertaken some type of comprehensive mining project? Staff responded that staff is undertaking such a study. This LPA member then asked the County attorney if one of the three DRGR permitted uses be a precarious action without the type of data and analysis that the County is developing. The County Attorney responded that they would have to examine it closely. The County Attorney agreed with this LPA member that, from a legal perspective, it would be prudent to have a

detailed analysis before going forward with precluding that type of use. This member also asked if Goal 20 should refer to rural residential to be more exact and because "there's a lot of residential out there." This member also asked how many meetings or town forums or public hearing type processes were held. The consultant responded that there were four Steering Committee meetings and one large public event. This LPA member asked if the four Steering Committee meetings were "notified." The consultant responded: "no, this is a privately-funded plan."

One LPA member asked if there were people at these meetings that identified any concerns with the plan as proposed. The consultant responded "Yes," and he indicated that the transportation policies had generated quite a bit of discussion and that about 25 people voted against them "because some felt that it was too restrictive to say no widening, no extension. He also indicated that people on the other side of the issue indicated that the problem is speed and that if the roads are widened or made better, then people will just go even faster. This LPA member also referred to "a lot of mines out on Highway 31 and asked if "the community feels there's not any areas that would be appropriate for mining within this planning area." The consultant responded that the planning area is mostly divided up into smaller parcels and that the existing mines are in Charlotte County and are probably meeting a local need for that material. He also indicated that "We've never heard any interest" in doing a mine on the "big ranch land near I-75."

One LPA member noted that he thought flooding is the biggest issue out in that area and that should receive a major part of the focus. The consultant respond with the following: "And we agree. That's why the natural environment really re-enforces this land use pattern because with the flooding, you really don't want any more density than what you're getting right now."

One member asked what efforts were made to reach some of the larger land owners. The consultant responded that he could not tell you for sure if every large track owner was notified, he did not have anybody come and complain from that perspective. He also noted that the Steering Committee took care of that detail.

At this point in the public hearing the LPA chairman asked for public input in the order of the request cards that he had received. One member of the public indicated that he was not in favor of this amendment as "people had relied upon the comprehensive plan since 1985 and future roadways." This person also asked for clarification as to whether or not plan amendments could be made if this proposal was incorporated into the plan. One LPA member noted that there is a new criteria that seemingly elevate public interest considerations and "that the language is probably similar to what's in the Lee Plan for DRGR." Staff clarified that it is very similar to the Buckingham language. This member of the public expressed concerns with eliminating mining and industrial uses. This member of the public also stated that there were large land owners that were not contacted. One LPA member asked about the earlier comment by this member of the public concerning future roadways. This person responded that "There's a comprehensive road use map, Henderson Grade Extension, Pritchett Parkway Extension, all these roads are designated so that everyone since 1985 knew where they were going. This LPA member then asked planning staff what roads this proposal would directly effect, excluding Bayshore, I-75, and State Road 31. Planning staff responded that the citizen was, believed to be, referring to the Official Traffic Ways map, which showed a far greater number of roads than what the County ever really planned on constructing. Lee

County DOT staff responded that there are not any roads that are being affected from the standpoint of 2020. DOT staff noted that the Official Traffic Ways map has a longer horizon than 2020.

Another member of the public addressed the LPA and noted that he had not been notified about the June 6<sup>th</sup> meeting but that he had learned about it from an ad in the news paper. He noted that the Steering Committee was self appointed and that they were upset over the mine request and that the proposal is a knee-jerk reaction to his mine proposal.

One member of the Bayshore Steering Committee addressed the LPA. This person stated that "Mostly I guess there are people that are doers and people that stand by and don't do and we were one of the doers and got involved in it." This committee member stated that the request did initially start with the mining issue and what could possibly happen in the community, and that the Steering Committee was "spun off" "so that we could try to address and protect what we've all bought into in the Bayshore area." This speaker noted that both of the previous public speakers were provided information and that one of them actually attended the June 6<sup>th</sup> 2001 public meeting. This Steering Committee member noted that there were approximately 400 to 500 people in attendance and that "very few, if any were against the policies." This person stated that "so this is really just a plan, just a simple version of a plan to try to keep what we've all bought into out there...whether it's a living off of horses or farming or citrus or just a hobby, that's the area we've chose and we've all spent a lot of money there and we're not trying to hinder the County from maintaining our roads or helping us with our water problem and we would love to see that. But we don't want to see the widening of our roads. We don't want to see the extension of them." One member of the LPA asked this speaker if the Steering Committee would mind delaying consideration of the mining prohibition and have staff address the issue with the wider study. The Steering Committee member replied that there's no industrial on the east side of I-75 and the industrial zoning that's on the west side of I-75 is really the place to develop it. One LPA member stated that he thought that "there are a few things that are missing in the plan." The items mentioned were (1) revised language to incorporate the transportation planning that has been made already in that area; (2) a need for a "interchange area plan" for the proposed Del Prado interchange area; (3) inventory of any suitable industrial land within the planning area; (4) more contact with the large land owners; and, (5) assessment of the location of potentially mineable materials. The Steering Committee member responded that "the issue of the roads is way beyond 2020." He also pointed out the Committee's concern related to the extension of Naul Road and that State Route 31 is not a good hurricane evacuation route due to frequent flooding and the lack of any planned improvements. He also stated that the Committee has mailed the land owners and that "we would be happy to have them participate with us." He again stated that there is no industrial land within the area and that there was industrial lands located on the west side of I-75.

Another member of the Steering Committee addressed the LPA and stated that she was a 27 - year resident of the area, and a 42 - year resident of Lee County. This Committee member pointed out that "I moved to that area for the rural life style. She indicated a desire to preserve the rural area. She also stated that they had "been doing broad based mailings to make sure the land owners receive notice."

A representative from the "Babcock Florida Company" addressed the LPA. This representative read the following prepared statement: "Babcock Florida are long time land owners in the area. Babcock believes that

issues such as hurricane evacuations and regional access are critical and transportation officials and planning experts must have the ability to respond to such needs. Therefore, Babcock objects to the limiting – any limits to the improvements of State Road 78.”

Another member of the Steering Committee addressed the LPA and expressed support for the amendment. This Steering Committee member noted that he “bought into that rural area and this plan really talks or speaks to a very small area.” This individual questioned why the community would “want to throw an industrial park in the center of 13,000 acres that is primarily made up with equestrian owners.” The speaker referred to an earlier speaker’s knee-jerk reaction comment and stated that a lot of people were concerned with children riding on horses in the area when blasting would occur at the proposed mine. He provided that activity could “spook a horse and injure a child, or injure an adult for that matter.”

#### **PART IV - LOCAL PLANNING AGENCY CONTINUED REVIEW**

DATE OF PUBLIC HEARING: April 22, 2002

##### **A. LOCAL PLANNING AGENCY REVIEW**

One LPA member disclosed that he had been contacted by “a number of people both for and against.” Discussion concerning member contacts occurred and it was decided that each member would disclose these contacts after the staff presentation and before the public hearing. Planning staff provided a brief presentation concerning the request. Staff reviewed the staff report, proposed language changes, and the overall staff recommendation that the amendment should be transmitted to the Florida Department of Community Affairs. Staff also highlighted the changes to the transportation polices.

One LPA member raised the prohibition of mining issue and his concern that mining is one of only three permitted uses in the DRGR. This member asked whether or not staff believed this issue should be looked at in a countywide context and where staff is on that issue. Staff responded that staff supported the policy that would preclude mining in the community. Staff referred to attachment #4 of the staff report which provides the generalized existing land use map for the community. Staff stated that this attachment demonstrates that the community has been subdivided into large lot estates. Staff stated that the land use pattern demonstrates that a mine has a large compatibility hurdle and staff believes that a mine would fail “the compatibility test” when viewing the location of existing residential uses and the widespread nature of the residential uses. This LPA member asked if the applicant provided attachment 4. Staff responded that staff generated the map utilizing the County’s existing land use database. Staff pointed out that there are only a couple of areas in the community in which there are larger land tracts. Staff identified parcels in the northwest corner of the community along I-75, the proposed mine site (Chateau Estates), properties along Pritchett Parkway, and properties in the northeast corner of the community along State Road 31. Staff also stated that mining in the planning area did not pass the compatibility test given the existing pattern of residential uses in the community.

One LPA member asked if the community plan attempted to integrate itself with countywide issues such as surface water management. Staff responded that surface water management had not been addressed as part of

this plan. This LPA member also stated that there was no data and analysis presented addressing septic system usage in the community and "the systematic high water tables of the Bayshore area." Staff responded that staff did struggle with the sewer and water language as staff does not like to discourage these types of services. Staff did note that the objective would not preclude more intense developments from actually "hooking up" to these services.

One LPA member observed that he thought interstate/interchange areas were to serve the traveling public, not to serve neighborhood commercial and community commercial objectives. Staff noted that there are other intersections that would be able to accommodate neighborhood commercial needs. Staff explained that the General Interchange land use category does allow general retail uses, although those uses might not be neighborhood type commercial. This LPA member asked if the applicant attempted to do a commercial land study that "matches the population rate to the downscale of commercial opportunities in this area." Staff responded that no analysis was done. Staff further provided that the plan amendment incorporates the rural community character. In further clarification staff stated the following: "So more so than a strict data and analysis of trying to make the Bayshore community be some holistic type community where they can do their neighborhood commercial shopping, they are willing to, in their rural lifestyle, have to make that trip into town to the grocery store to get those kinds of items and that's part of the rural character that they are trying to preserve." Staff also provided that most of these neighborhood commercial services are available in relative proximity to the community.

One LPA member asked about the public participation process and whether or not the proposal meets state requirements for data and analysis. Staff responded that they believe that it does.

One LPA member referred to Policy 20.1.2 and asked if this was the first time that staff cited specific street addresses in the comprehensive plan. Staff did not know of any other instance or any other way to address this issue. Staff did not want to create a problem, such as discouraging further investment by the property owners.

Two Local Planning Agency members asked several questions concerning Objective 20.1, specifically relating to the language that states that no land use map amendments will be amended to a more intensive category after a specified date unless a finding of overriding public necessity is made by three County Commissioners. The questions were related to the process that would be used in the finding; whether this requirement is appropriate for small scale amendments; if the language is unique or similar to language already in the Plan. Staff responded that the plan amendment process would be utilized, going through the LPA, and a majority vote of the Board of County Commissioners with a finding of overriding public necessity. Staff also responded that the finding would be appropriate for small scale amendments. For existing similar Lee Plan language staff discussed Objective 17.1, and Density Reduction/Groundwater Resources language.

At this point in the hearing the LPA members disclosed communications that the members had with the public on this topic. The Chairman of the Local Planning Agency then opened the meeting for public testimony. The planning consultant representing the Steering Committee distributed revised language and provided a brief presentation concerning the request. The planning consultant referred the LPA to the background report, Attachment D of the application. The consultant highlighted changes made as a result of the previous LPA

hearing. The consultant addressed flooding and stated that was one of the reasons why the low density pattern is appropriate. The consultant discussed mining and the conclusion that it is not an appropriate use in the community. The consultant also addressed commercial uses and noted that there were 53 acres of land "under the planning table for commercial in this area, and given the slow rate of growth...we feel that's more than enough for the commercial needs." The consultant also discussed transportation issues. The consultant also announced that the Steering Committee would host another community wide public meeting at the civic center on June 5<sup>th</sup> and that every land owner would be notified by mail.

In addition to the planning consultant mentioned above, a total of thirty four persons spoke. Twenty persons stated their support for the proposed amendment. Ten persons stated their opposition to the proposed amendment. One local land use attorney representing the Babcock Florida Company stated that his client was not opposed to the Bayshore plan with the exception of Objective 20.2. One local consultant representing Southwest Florida Transportation Initiative (SWFTI) stated that SWFTI was opposed to Objective 20.2, but otherwise have no position on the other elements of the plan. One local land use attorney and local consulting engineer stated that the County should exempt a pending rezoning project that is located in the community from these regulations.

One member of the public raised an issue that one member of the LPA, Mr. Greg Stuart, might have a conflict of interest in these proceedings and asked the County Attorney's office for some direction. A discussion was held concerning the nature of this conflict. The Assistant County Attorney felt that there was a conflict of interest under the rules of ethics. It was stated that Mr. Stuart would need to disclose the conflict of interest and abstain from voting.

After the public presentations a lengthy discussion ensued between the LPA, the planning consultant, and the staff regarding transportation, the public participation process, and the applicant working further with County staff to resolve issues. The LPA deferred further action on the item to a time and date to be announced in the future.

## **PART V - LOCAL PLANNING AGENCY CONTINUED REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: June 10, 2002

### **A. LOCAL PLANNING AGENCY REVIEW**

Planning staff provided a brief presentation concerning the proposed amendment. Staff discussed the major changes that occurred to the proposed language since the last LPA hearing. Staff noted that the language pertaining to transportation changed substantially and that staff had worked with the applicant in arriving at the now proposed language. Lee County DOT staff noted that the language now recommended was "a good compromise" and does not preclude the County from doing long range planning.

The Steering Committee's planning consultant also provided a brief presentation concerning the revised amendment language. The consultant also stated that additional background information has been submitted to address the various issues that the LPA members have raised in the past hearings. The consultant also provided a discussion of the community wide meeting held by the Steering Committee on June 5<sup>th</sup>. The consultant stated that everybody at the June 5<sup>th</sup> meeting was asked to fill out a card and vote on the plan. The consultant reported the results as: 87 votes in favor (including 11 households where two people voted on one ballot); 11 negative votes; and, 4 undecided votes.

The Chairman of the LPA opened the meeting to public comment and a total of twenty-one persons spoke in turn. Fourteen persons stated their support for the proposed amendment. Two persons stated their opposition to the proposed amendment. Four persons stated their preference that the plan language should be stronger. Several of the speakers noted that they had voted against the proposal at the June 5<sup>th</sup> public meeting only because of there desire for stronger language.

One member of the LPA stated that he felt that all of the concerns that have been raised by the LPA and staff were adequately addressed. He also believed the public notification issues and transportation issues had been addressed. This LPA member made a motion to recommend transmittal of the Bayshore Community plan as outlined in the June 6, 2002 memorandum from Matt Noble. The motion was seconded and discussion took place. The motion failed on a vote of 2 to 2.

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

1. **RECOMMENDATION:** Per Administrative Code AC-13-6, the recommendation of the LPA is to **not** transmit the proposed amendment. Administrative Code AC-13-6 provides that in "those instances where the vote results in a tie vote...the recommendation of the LPA will be conclusively presumed to be a recommendation not to transmit the proposal and will satisfy the requirements of Section 163.3174(1) and (4)(a), Florida Statutes."

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

<b>NOEL ANDRESS</b>	<b>NAY</b>
<b>MATT BIXLER</b>	<b>AYE</b>
<b>SUSAN BROOKMAN</b>	<b>AYE</b>
<b>RONALD INGE</b>	<b>NAY</b>
<b>GORDON REIGELMAN</b>	<b>ABSENT</b>
<b>ROBERT SHELDON</b>	<b>ABSENT</b>
<b>GREG STUART</b>	<b>ABSENT</b>



**PART VI - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: September 4, 2002

**A. BOARD REVIEW:**

Staff presented a summary of this amendment before the Board on September 4, 2002. Fifty members of the public addressed the Board concerning the proposed amendment. Eight members of the public stated their opposition to the proposed amendment. They generally expressed concerns about property rights, and that additional study was needed prior to any adoption. Forty-two members of the public spoke in favor of the amendment. Six persons recommended that the language of "up to two units per acre with proper zoning" in the Outlying Suburban future land use category be removed from the proposed Vision Statement. These persons felt such language would encourage higher densities. All in favor of the amendment emphasized maintaining their current quality of life by maintaining the Bayshore rural area. Most in favor of the amendment noted their concerns over the impacts mining would create in the area. Others promoting the plan also voiced their concerns over the availability of utilities such as sewer and water, finding that such provisions would encourage the development of the area. The Board did discuss some language offered by a local engineer concerning stormwater management. The County Attorney offered an opinion that this language could not be transmitted as it had not been reviewed by the LPA. After some discussion the Board voted to transmit the amendment with Policy 20.1.4 subject to the results of a mining study performed by staff as well as some minor revisions to Objective 20.3, Policy 20.3.1, and Policy 20.3.2.

The Board voted to transmit the proposed amendment per the staff recommendation as contained above in Part I, B.1. with the exception of Objective 20.3, Policy 20.3.1, and Policy 20.3.2. The Board transmitted the following language for these items:

**OBJECTIVE 20.3: SEWER AND WATER.** Given the desire to maintain a low residential density, new central sewage service is not economically feasible and is discouraged north of Bayshore Road within the future non-urban land use categories. Central water service for enhanced fire protection will be encouraged where economically feasible.

**POLICY 20.3.1:** Central sewage service will be encouraged for existing and future high density and intensity developments south of Bayshore Road within the future urban land use categories and for new developments that are required to provide such service under the provisions of Standard 11.2 of the Lee Plan.

**POLICY 20.3.2:** No landowner will be required to connect to central sewer or water utilities or be assessed for same unless a threat to public health can be documented, or if a new development proposes an intensity that exceeds the thresholds in Standards 11.1 and 11.2 of the Lee Plan.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

1. **BOARD ACTION:** The Board voted to transmit the proposed amendment to the Florida Department of Community Affairs.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact as advanced by staff.

**C. VOTE:**

**JOHN ALBION**

\_\_\_\_\_  
**AYE**  
\_\_\_\_\_

**ANDREW COY**

\_\_\_\_\_  
**AYE**  
\_\_\_\_\_

**BOB JANES**

\_\_\_\_\_  
**AYE**  
\_\_\_\_\_

**RAY JUDAH**

\_\_\_\_\_  
**AYE**  
\_\_\_\_\_

**DOUG ST. CERNY**

\_\_\_\_\_  
**AYE**  
\_\_\_\_\_

**PART VII - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: November 22, 2002

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

The Department of Community Affairs provided no objections, recommendations, or comments concerning the proposed amendment.

**B. STAFF RESPONSE**

Adopt the amendment as transmitted to the Florida DCA.



# Community Development Dept.

## COMPREHENSIVE PLANNING SECTION

Charlotte County Administration Center

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Port Charlotte, FL 33948

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*"To exceed expectations in the delivery of public services"*

### MEMORANDUM

**Date:** October 28, 2005

**TO:** Honorable Board of County Commissioners

**FROM:** Jie Shao, Planner II *Jie Shao*  
Comprehensive Planning Section

**SUBJECT:** Urban Sprawl Section of the Babcock Ranch CPA

#### EXECUTIVE SUMMARY

Staff followed the specific guidance of Chapter 9J-5, Florida Administrative Code (F.A.C.), regarding "Urban Sprawl" to review the proposed Babcock Ranch CPA. The purpose was to make a determination whether the proposed development does or does not meet the criteria of Urban Sprawl.

9J-5 (F.A.C.) lists thirteen "Primary Indicators" of Urban Sprawl. Staff analyzed the proposed development and determined that the proposed Babcock plan amendment meets 9 of 13 primary indicators of Urban Sprawl. However, because the application identifies seven innovative strategies that will be utilized in the proposed Babcock development, the proposed development appears to meet the State's definition of innovative and feasible planning and development strategies which then exempts it from being considered Urban Sprawl.

Charlotte County contains a situation shared by very few other counties in Florida, or the country. The County was platted for development and vested rights were created with little foresight into the difficulties this would create. Currently, we have a large amount of vacant residential lots, vacant commercial, as well as vacant light industrial lands in the Urban Service Area. The use of innovative strategies in such a rural area may not be considered sprawl by State standards, but the effects of this development when 9 of the 13 indicators of sprawl have been met should be carefully considered.

Staff has determined that approval of the development will promote Urban Sprawl in the East County.

## **BABCOCK RANCH CPA URBAN SPRAWL**

One purpose of Chapter 9J-5, the Florida Administrative Code (F.A.C.) is to give guidance to local governments and other interested parties on how to ensure that plans and plan amendments are consistent with relevant provisions of the state comprehensive plan, regional plans, and Chapter 163, Part II, Florida Statutes. The other part of Chapter 9J-5 regards discouraging "Urban Sprawl". This also includes provisions concerning the efficiency of land use, the efficient provision of public facilities and services, the separation of urban and rural land uses, and the protection of agriculture and natural resources. Numerous provisions of Chapter 9J-5, F.A.C., relate to the Urban Sprawl issue, and several provisions expressly require local plans to discourage Urban Sprawl.

F.A.C. 9J-5.003 provides definitions of "Urban Sprawl" which are as follows:

"Urban sprawl" is the urban development or uses which are located in predominantly rural areas, or rural areas interspersed with generally low-intensity or low-density urban uses, and which are characterized by one or more of the following conditions:

- (a) The premature or poorly planned conversion of rural land to other uses;
- (b) The creation of areas of urban development or uses which are not functionally related to land uses which predominate the adjacent area; or
- (c) The creation of areas of urban development or uses which fail to maximize the use of existing public facilities or the use of areas within which public services are currently provided.

"Urban Sprawl" is typically manifested in one or more of the following land use or development patterns:

- o Leapfrog or scattered development;
- o Ribbon or strip commercial or other development; or
- o Large expanses of predominantly low-intensity, low-density, or single-use development.

Chapter 9J-5.006, F.A.C., which is attached to the report, also provides specific guidance for reviewing a proposed plan amendment to determine whether it is "Urban Sprawl" or not. Specifically,

1. Chapter 9J-5.006(3)(b)7. and (c), F.A.C., provide that the future land use element shall contain specific objectives and policies which discourage the proliferation of Urban Sprawl.
2. Chapter 9J-5.011(2)(b)3. and (c), F.A.C., provide that the general sanitary sewer, solid waste, drainage, potable water and natural groundwater aquifer recharge element shall contain objectives and policies which address maximizing the use of existing facilities and discouraging Urban Sprawl.

Furthermore, when read as a whole and in concert with the goals and policies of the State Comprehensive Plan and Chapter 163, Part II, F.S., the State clearly requires local governments to discourage Urban Sprawl. The Florida Administrative Code focuses on promoting orderly growth and development; encouraging the most appropriate use of land, water, and resources; efficiently providing facilities and services; and protecting human, environmental, social, and economic resources.

9J-5 lists thirteen "Primary Indicators" of Urban Sprawl. These are provided below with staff's analysis of how each is relevant to the proposed amendment and a determination of whether the proposed amendment meets that indicator of Urban Sprawl or not.

***1. Promotes, allows or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses in excess of demonstrated need.***

The proposed plan amendment contains a total of 13,686± acres within Charlotte County, all of which are currently designated as Agriculture on the Future Land Use Map. Within this area the applicant proposes to construct 17,870 mixed residential units, 5 million square feet of retail/office space, and 664,057 square feet of industrial space. The project also proposes 600 hotel rooms and 72 holes of golf, but it is not clear if this will be located in Charlotte County. Although the proposed plan amendment can establish a Special Urban Service Area, the proposed site is located approximately 13 miles from the nearest existing Urban Service Area boundary.

The application does propose more than low density, low intensity or single-use development but it does not contain a "needs analysis" demonstrating how the project meets Charlotte County's needs. Charlotte County currently has in excess of 200,000 platted residential lots County-wide, of which 140,000 are vacant residential lots (this includes multi-family as well as single-family). Data from 2004, places approximately 181,200 platted residential lots within the County's Urban Service Area and approximately 60% of these lots are still undeveloped. This includes the approved Murdock Village Redevelopment Plan that is vested with a development potential of 2,744 single-family units, 538 multi-family units, 732,434 square feet of regional commercial and 2,291,448 square feet of retail/office uses. There is also the approved Enterprise Charlotte Airport Commerce Park containing 1,400 acres of light industrial lands; and a number of other approved residential projects with about 1,500 mixed residential units.

As stated earlier, the proposed site is located at least 13 miles away from the Urban Service Area boundary. This proposed plan amendment is contrary to Policy 1.1.1. (The Urban Service Area strategy consists of two distinct services areas which are:) of the Future Land Use Element of the Charlotte County Comprehensive Plan. According to the Permitting Section of the Building Construction Services Department, of the 6,346 building permits issued from October 1997 to 2001, 6,099, or over 93% are located within the Urban Services Area Overlay District, exactly where the 1997 Comprehensive Plan encourages development to occur.

To determine if there is a need for the proposal a "needs analysis" should be prepared. The "needs analysis" should include: the County's projected growth rate (2006 through 2030); existing approved and proposed residential, commercial and industrial development; current vacancy rates for residential, commercial and industrial development; and current and projected absorption rates for residential, commercial and industrial development. Without establishing the County's residential, commercial, or industrial need and an analysis of the effect of the proposed development on such need, staff has determined that the proposed development meets this "Urban Sprawl" indicator. **Staff's determination:** The proposed plan amendment meets this indicator.

***2. Promotes, allows or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands which are available and suitable for development.***

The Babcock Ranch is currently within a rural area which is clearly separated and at least 13 miles outside areas of existing urban development. For example, in South County currently there are over 6,325 acres designated as Low Density Residential within the Urban Service Area Overlay District. The applicant states that the Babcock Ranch CPA will be a self-sustaining community; however, the proposed buildout year is 2030. Prior to the buildout, scattered commercial and residential development will occur within the project area, and the site may not be self-sustaining until closer to year 2030 or beyond. The potential residents will need to shop, work and find entertainment elsewhere. In fact, problems such as high local public service costs and increased automobile dependence for all types of travel will result. Overall, the proposed Babcock development is typically manifested in leapfrog development.

**Staff's determination:** The proposed plan amendment meets this indicator.

***3. Promotes, allows or designates urban development in radial, strip, isolated or ribbon patterns generally emanating from existing urban developments.***

The proposed development is far away from the existing Urban Service Area Overlay boundary, and is surrounded by lands which are predominately designated as Agriculture. The intent of an agricultural designation is to promote very low-density with rural residential characteristics. Also, this area does not have infrastructure and services such as utilities, roads, drainage system and schools to support the development. In fact the external infrastructures (i.e., roads) are currently functionally designated as rural collector and minor arterial. The proposed Babcock development promotes urban development in radial and isolated patterns, and it is located in a rural area which is 13 miles away from the existing Urban Service Area boundary, and surrounded by agricultural lands.

**Staff's determination:** The proposed plan amendment meets this indicator.

***4. As a result of premature or poorly planned conversion of rural land to other uses, fails adequately to protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater***

*aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.*

The Babcock Ranch consists of 91,362± acres of which approximately 9,863 acres are located in Lee County. The applicant states that only an estimated 13,686± acres of the Charlotte County area are proposed for development at this time, and the remaining Charlotte County lands will be conveyed to the State of Florida under a Rural Land Stewardship Plan in the near future. The applicant states however that present uses of the ranch, including crop agriculture, sod farming, cattle ranching, eco-tours, mining, and managed hunting leases, will remain, except in the 13,686 acres that is proposed for development. This does not qualify as “preservation” in the strict definition of the word; however, the existing uses constitute a “managed conservation” of the property. In the application, no detailed plan regarding how to preserve the environmentally sensitive lands is presented. Again, this is a leapfrog type of development, outside the Urban Service Area, and is a premature conversion of some rural land to urban uses.

**Staff's determination:** The proposed plan amendment meets this indicator.

*5. Fails adequately to protect adjacent agricultural areas and activities, including silviculture, and including active agricultural and silvicultural activities as well as passive agricultural activities and dormant, unique and prime farmlands and soils.*

The size and scope of the proposed development located in a rural area of the East County Planning District will create traffic impacts on State Road 31 and County Road 74 (currently 2-lane roads), pollution, and noise as well as compatibility issues with the surrounding area. In the application, it is stated that buffers and setbacks will be determined at the time of Planned Development review and approval. Buffers and setbacks however are not the tools to solve the traffic, pollution and compatibility issues. Furthermore, it is the expressed intent of the applicant to convert the existing water utility from an agricultural supply to a potable supply and to sell the water. In an area that is predominately agricultural with no utility infrastructure, this proposal will place significant pressure on the County to approve further conversions of agricultural lands to more urban densities. The applicant does not address how to protect adjacent agriculture areas and activities.

**Staff's determination:** The proposed plan amendment meets this indicator.

*6. Fails to maximize use of existing public facilities and services.*

The applicant realizes that there are no existing public facilities and services in the geographical boundary of the proposed plan amendment. In the application, it is stated that the most probable solution to wastewater treatment and disposal will be to construct a single plant system (in phases) centrally located within the development area. The proposed plan amendment allows urban development to occur in rural areas supported by package treatment plant; the effect is to shift development that would have occurred where facilities exist to areas where those facilities do not exist. As a result, existing facilities may be underused and the uses of small, isolated facilities are encouraged. There is an existing water utility; however, this utility would have to convert from



agricultural supply to domestic supply. In conclusion, the proposed development fails to maximize use of existing public facilities and services.

**Staff's determination:** The proposed plan amendment meets this indicator.

***7. Fails to maximize use of future public facilities and services.***

The applicant states that the proposed Babcock Ranch CPA will be responsible for providing future facilities and services to community residents. The site is located in the Rural Service Area. According to Policy 1.1.1 II (Rural Service Area) of the Future Land Use Element of the Comprehensive Plan, Rural Service Areas are located primarily within the southern, eastern, and bridgeless barrier island sections of Charlotte County. They are characterized by agricultural lands and very low density residential development. Services provided include, but are not limited to, garbage collection, emergency services, and roadway and drainage maintenance. Provision of additional infrastructure and services will be at a lower priority level than for land within the Urban Service Area. Furthermore, while there is an existing water utility, this utility must convert from agricultural supply to domestic supply. In the near future, Charlotte County has no plans to extend its water and sanitary sewer systems to the plan amendment area, or to do road improvements such as widening State Road 31 and County Road 74 and improving the drainage system. The applicant has not demonstrated that the proposed development maximizes use of future public facilities and services.

**Staff's determination:** The proposed plan amendment meets this indicator.

***8. Allows for land use patterns or timing which disproportionately increase the cost in time, money and energy, of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.***

The proposed plan amendment area is located outside the Urban Service Area Overlay District. There are neither capital improvement projects nor any infrastructure or services located in the area, except for a small fire station. The applicant realizes the situation and has stated in the application that the developers of the Babcock Ranch CPA will be required to pay for the construction and/or extension of water, sewer, and roadway improvements. This would potentially increase the cost of residential units in the proposed community due to the economic factors associated with the costs of improvements. This is contrary to the County goals that strive to increase the supply of safe, affordable, and sanitary housing for low- and moderate-income persons, and to eliminate unnecessary regulatory practices that add to the cost of housing. The proposed development meets this indicator.

**Staff's determination:** The proposed plan amendment meets this indicator.

***9. Fails to provide a clear separation between rural and urban uses.***

The proposed mix of development will provide a clear separation between surrounding rural uses and proposed urban uses.

**Staff's determination:** The proposed plan amendment does not meet this indicator.

***10. Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.***

The proposed development requires expansion of capital facilities, thereby draining limited capital resources that could otherwise be used to improve existing facilities which would either stimulate infill development or the redevelopment of existing neighborhoods and communities.

**Staff's determination:** The proposed plan amendment meets this indicator.

***11. Fails to encourage an attractive and functional mix of uses.***

In the application, it is stated that the proposed Babcock Ranch CPA encourages a full and functional mix of uses.

**Staff's determination:** The proposed plan amendment does not meet this indicator.

***12. Results in poor accessibility among linked or related land uses.***

In the application, it is stated that internal road networks will assure accessibility between residential areas, shopping, and jobs. Although the applicant states that the proposed development provides accessibility among related land uses (i.e., proposed Policy 1.4, 4.1, and 4.2), the proposed amendment does not identify how this accessibility will be achieved. In addition, the proposed amendment does not address the accessibility among linked or related surrounding land uses.

**Staff's determination:** Staff could not make the determination because the proposed amendment does not address the accessibility among linked or related surrounding land uses.

***13. Results in the loss of significant amounts of functional open space.***

The applicant states that the proposed development contains a total of 13,686 acres within Charlotte County. The proposed development would include 17,870 units of residential development, 2,925,000 square feet commercial/retail development, 1,900,000 square feet office, a 600-room hotel, and 150,000 square feet of government /civic development. The applicant also proposes at least 35% of the site will remain as open space. However, no detailed plan is included. Open space should be accessible to all, functional in its layout, and provide a tangible and practical benefit to the community at large – not just individuals.

**Staff's determination:** Staff could not make the determination because no detailed plan regarding the *functional* open spaces is included in the application.

**Further Analysis**

The applicant states that the proposed Babcock development will be a self-sustaining community, with a build-out date close to year 2030. The proposed development will include seven of the recommended strategies (9J-5.006(5)(1), F.A.C.): urban villages, area-based allocations, clustering and open space provisions, mixed-use requirements,

protections for environmentally sensitive areas, and provisions for the cost-efficient delivery of public facilities and services. The initial perception of proposed development is attainable. In reality however there are several unanswered issues. The proposed development is consistent with Rules of Subsection (11)(b) of Chapter 163, F.S., and of 9J-5.006(5)(I), F.A.C., which are as follows:

Subsection (11)(b) of Chapter 163, F.S.:

*It is the intent of the Legislature that the local government Comprehensive Plans and plan amendments adopted pursuant to the provisions of this part provide for a planning process which allows for land use efficiencies within existing urban areas and which also allows for the conversion of rural lands to other uses...through the application of innovative and flexible planning and development strategies and creative land use planning techniques, which may include, but are not limited to, urban villages, new towns, satellites, area-based allocations, clustering and open space provisions, mixed-use development, and sector planning.*

9J-5.006(5)(I), F.A.C.:

*(I) Innovative and flexible planning and development strategies. Notwithstanding and as a means of addressing any provisions contained in subparagraphs 9J-5.006(3)(b)8., 9J-5.011(2)(b)3. and subsection 9J-5.003(140), F.A.C., and this subsection, the Department encourages innovative and flexible planning and development strategies and creative land use planning techniques in local plans. Planning strategies and techniques such as urban villages, new towns, satellite communities, area-based allocations, clustering and open space provisions, mixed-use development and sector planning that allow the conversion of rural and agricultural lands to other uses while protecting environmentally sensitive areas, maintaining the economic viability of agricultural and other predominantly rural land uses, and providing for the cost-efficient delivery of public facilities and services, will be recognized as methods of discouraging urban sprawl and will be determined consistent with the provisions of the state comprehensive plan, regional policy plans, Chapter 163, Part II, F.S., and this chapter regarding discouraging the proliferation of urban sprawl.*

Although the application identifies seven innovative strategies that will be utilized in the proposed Babcock development, no detailed plan is included to address how to implement these seven strategies.

The proposed development is located in a rural area, and is 13 miles away from the existing Urban Service Area Overlay District boundary. There is no master-plan for the surrounding agricultural lands. The applicant expresses the intent to convert the existing water utility from agricultural supply to potable supply and to sell the water. The fact that potable water will be made available will place significant pressure on the development of surrounding agricultural lands, which will promote urban sprawl in adjacent areas. All of the improvements that would be necessary to make this a self-sustaining community, such as schools, libraries, hospitals, fire/EMS, police, and myriad other facilities and services will also make the surrounding agricultural areas much more attractive to other

developers and will make the land more expensive for persons choosing to live a rural lifestyle.

We have a very unique situation in Charlotte County. Currently, we have a large amount of vacant residential lots, vacant commercial, as well as vacant light industrial lands in the Urban Service Area, such as Murdock Village Redevelopment Plan, Enterprise Charlotte Airport Commerce Park and recently approved mixed residential developments which can account for over 1,000 potential units in the Suburban Area of the Urban Service Area in the South County.

In conclusion, the proposed Babcock plan amendment meets 9 of 13 primary indicators of Urban Sprawl. Staff has determined that the proposed development is "Urban Sprawl"; it may also meet the State's definition of innovative and flexible planning and development strategies which then exempts it from being considered Urban Sprawl. However, it is staff's determination that approval of the development will promote "Urban Sprawl" in the East County.

### **9J-5.003 Definitions**

“Urban sprawl” means urban development or uses which are located in predominantly rural areas, or rural areas interspersed with generally low-intensity or low-density urban uses, and which are characterized by one or more of the following conditions:

- (a) The premature or poorly planned conversion of rural land to other uses;
- (b) The creation of areas of urban development or uses which are not functionally related to land uses which predominate the adjacent area; or
- (c) The creation of areas of urban development or uses which fail to maximize the use of existing public facilities or the use of areas within which public services are currently provided.

Urban sprawl is typically manifested in one or more of the following land use or development patterns:

- Leapfrog or scattered development;
- Ribbon or strip commercial or other development; or
- Large expanses of predominantly low-intensity, Low-density, or Single-use development.

### **9J-5.006 Future Land Use Element**

The purpose of the future land use element is the designation of future land use patterns as reflected in the goals, objectives and policies of the local government comprehensive plan elements. Future land use patterns are depicted on the future land use map or map series within the element.

(3) Requirements for Future Land Use Goals, Objectives and Policies.

(b) The element shall contain one or more specific objectives for each goal statement which address the requirements of paragraph 163.3177(6)(a), F.S., and which:

- 8. Discourage the proliferation of urban sprawl;

(5) Review of Plans and Plan Amendments for Discouraging the Proliferation of Urban Sprawl.

(a) Purpose. The purpose of this subsection is to give guidance to local governments and other interested parties about how to make sure that plans and plan amendments are consistent with relevant provisions of the state comprehensive plan, regional policy plans, Chapter 163, Part II, F.S., and the remainder of this chapter regarding discouraging urban sprawl, including provisions concerning the efficiency of land use, the efficient provision of public facilities and services, the separation of urban and rural land uses, and the protection of agriculture and natural resources.

(b) Determination. The determination of whether a plan or plan amendment discourages the proliferation of urban sprawl shall be based upon the standards contained in this subsection.

(c) In general. The discouragement of urban sprawl accomplishes many related planning objectives. The purpose of this subsection is to provide a general methodology for examining whether or not a plan or plan amendment discourages the proliferation of urban sprawl. This subsection is organized into twelve paragraphs, paragraphs (5)(a) through (5)(l). Nothing in this paragraph (5) shall be interpreted to require that a local government submit information beyond the information required by other provisions of this chapter.

(d) Use of indicators. Paragraph (5)(g) describes those aspects or attributes of a plan or plan amendment which, when present, indicate that the plan or plan amendment may fail to discourage urban sprawl. For purposes of reviewing the plan for discouragement of urban sprawl, an evaluation shall be made whether any of these indicators is present in a plan or plan amendment. If an indicator is present, the extent, amount or frequency of that indicator shall be considered. The presence and potential effects of multiple indicators shall be considered to determine whether they collectively reflect a failure to discourage urban sprawl.

(e) Methodology for determining indicators. Paragraphs (5)(h) through (5)(j) describe the three major components of a methodology to determine the presence of urban sprawl indicators. Paragraph (5)(h) describes how land use aspects of a plan shall be analyzed. The land use element, including both the future land use map and associated objectives and policies, represents the focal point of the local government's planning effort. Paragraph (5)(i) describes the unique features and characteristics of each jurisdiction which provide the context of the analysis and which are needed to evaluate the extent, amount or frequency of an indicator and the significance of an indicator for a specific jurisdiction. Paragraph (5)(j) recognizes that land use plans generally may be significantly affected by other development policies in a plan which may serve to mitigate the presence of urban sprawl indicators based on the land use plan alone. Paragraph (5)(j) describes development controls which may be used by a local government to mitigate the presence of sprawl.

(f) Analysis components. subsection (5)(k) describes how the analysis components described in subsections (5)(h) through (5)(j) are combined in a systematic way to determine the presence of urban sprawl indicators.

(g) Primary indicators. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality in order to determine whether the plan or plan amendment:

1. Promotes, allows or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses in excess of demonstrated need.

2. Promotes, allows or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands which are available and suitable for development.

3. Promotes, allows or designates urban development in radial, strip, isolated or ribbon patterns generally emanating from existing urban developments.

4. As a result of premature or poorly planned conversion of rural land to other uses, fails adequately to protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.

5. Fails adequately to protect adjacent agricultural areas and activities, including silviculture, and including active agricultural and silvicultural activities as well as passive agricultural activities and dormant, unique and prime farmlands and soils.

6. Fails to maximize use of existing public facilities and services.

7. Fails to maximize use of future public facilities and services.

8. Allows for land use patterns or timing which disproportionately increase the cost in time, money and energy, of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.

9. Fails to provide a clear separation between rural and urban uses.

10. Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.

11. Fails to encourage an attractive and functional mix of uses.

12. Results in poor accessibility among linked or related land uses.

13. Results in the loss of significant amounts of functional open space.

(h) Evaluation of land uses. The comprehensive plan must be reviewed in its entirety to make the determinations in (5)(g) above. Plan amendments must be reviewed individually and for their impact on the remainder of the plan. However, in either case, a land use analysis will be the focus of the review and constitute the primary factor for making the determinations. Land use types cumulatively (within the entire jurisdiction and areas less than the entire jurisdiction, and in proximate areas outside the jurisdiction) will be evaluated based on density, intensity, distribution and functional relationship, including an analysis of the distribution of urban and rural land uses. Each land use type will be evaluated based on:

1. Extent.

2. Location.

3. Distribution.
4. Density.
5. Intensity.
6. Compatibility.
7. Suitability.
8. Functional relationship.
9. Land use combinations.
10. Demonstrated need over the planning period.

(i) Local conditions. Each of the land use factors in (5)(h) above will be evaluated within the context of features and characteristics unique to each locality. These include:

1. Size of developable area.
2. Projected growth rate (including population, commerce, industry, and agriculture).
3. Projected growth amounts (acres per land use category).
4. Facility availability (existing and committed).
5. Existing pattern of development (built and vested), including an analysis of the extent to which the existing pattern of development reflects urban sprawl.
6. Projected growth trends over the planning period, including the change in the overall density or intensity of urban development throughout the jurisdiction.
7. Costs of facilities and services, such as per capita cost over the planning period in terms of resources and energy.
8. Extra-jurisdictional and regional growth characteristics.
9. Transportation networks and use characteristics (existing and committed).
10. Geography, topography and various natural features of the jurisdiction.

(j) Development controls. Development controls in the comprehensive plan may affect the determinations in (5)(g) above. The following development controls, to the extent they are included in the comprehensive plan, will be evaluated to determine how they discourage urban sprawl:

1. Open space requirements.
2. Development clustering requirements.
3. Other planning strategies, including the establishment of minimum development density and intensity, affecting the pattern and character of development.
4. Phasing of urban land use types, densities, intensities, extent, locations, and distribution over time, as measured through the permitted changes in land use within each urban land use category in the plan, and the timing and location of those changes.
5. Land use locational criteria related to the existing development pattern, natural resources and facilities and services.



6. Infrastructure extension controls, and infrastructure maximization requirements and incentives.
7. Allocation of the costs of future development based on the benefits received.
8. The extent to which new development pays for itself.
9. Transfer of development rights.
10. Purchase of development rights.
11. Planned unit development requirements.
12. Traditional neighborhood developments.
13. Land use functional relationship linkages and mixed land uses.
14. Jobs-to-housing balance requirements.
15. Policies specifying the circumstances under which future amendments could designate new lands for the urbanizing area.
16. Provision for new towns, rural villages or rural activity centers.
17. Effective functional buffering requirements.
18. Restriction on expansion of urban areas.
19. Planning strategies and incentives which promote the continuation of productive agricultural areas and the protection of environmentally sensitive lands.
20. Urban service areas.
21. Urban growth boundaries.
22. Access management controls.

(k) Evaluation of factors. Each of the land use types and land use combinations analyzed in paragraph (5)(h) above will be evaluated within the context of the features and characteristics of the locality, individually and together (as appropriate), as listed in paragraph (5)(i). If a local government has in place a comprehensive plan found in compliance, the Department shall not find a plan amendment to be not in compliance on the issue of discouraging urban sprawl solely because of preexisting indicators if the amendment does not exacerbate existing indicators of urban sprawl within the jurisdiction.

(l) Innovative and flexible planning and development strategies. Notwithstanding and as a means of addressing any provisions contained in subparagraphs 9J-5.006(3)(b)8., 9J-5.011(2)(b)3. and subsection 9J-5.003(140), F.A.C., and this subsection, the Department encourages innovative and flexible planning and development strategies and creative land use planning techniques in local plans. Planning strategies and techniques such as urban villages, new towns, satellite communities, area-based allocations, clustering and open space provisions, mixed-use development and sector planning that allow the conversion of rural and agricultural lands to other uses while protecting environmentally sensitive areas, maintaining the economic viability of agricultural and other predominantly rural land uses, and providing for the cost-efficient delivery of public facilities and services, will be recognized as methods of discouraging urban sprawl and will be determined consistent with the provisions of the state comprehensive plan, regional policy plans, Chapter 163, Part II, F.S., and this chapter regarding discouraging the proliferation of urban sprawl.

**9J-5.011 Sanitary Sewer, Solid Waste, Stormwater Management, Potable Water and Natural Groundwater Aquifer Recharge Element**

The purpose of this element is to provide for necessary public facilities and services correlated to future land use projections.

(2) Requirements for Sanitary Sewer, Solid Waste, Stormwater Management, Potable Water, and Natural Groundwater Aquifer Recharge Goals, Objectives, and Policies.

(b) The element shall contain one or more specific objectives for each goal statement for each of the facilities or resources addressed in the element which address the requirements of paragraph 163.3177(6)(c), F.S., and which:

3. Address maximizing the use of existing facilities and discouraging urban sprawl;

Before the Secretary of the United States Department of the Interior

and

The Director of the United States Fish and Wildlife Service

**Supplemental Petition to Designate Critical Habitat for the Endangered  
Florida Panther**

November 19, 2009

**Sierra Club**  
85 Second St., Second Floor  
San Francisco, CA 94105  
(303) 449-5595

**Petitioner.**

## INTRODUCTION AND SUMMARY

The Sierra Club hereby petitions the Department of the Interior and the U.S. Fish and Wildlife Service to revise, or, in the alternative, to designate critical habitat for the Florida panther (*Puma concolor coryi*), an endangered species listed pursuant to the Endangered Species Act ('ESA'), 16 U.S.C. § 1531 *et seq.* This petition supplements the Conservancy of Southwest Florida's petition of January 21, 2009, and is filed under the authority of both the ESA and the Administrative Procedure Act ('APA'). This supplement focuses upon the acute threat climate change poses to the Florida panther.

This supplemental petition is proper under the ESA for two alternative reasons. First, under the ESA, "[a]ny interested person" may petition to revise a critical habitat designation. 50 C.F.R. § 424.14(a) & (c); *see also* 50 C.F.R. § 424.12 (designation criteria). Although the panther has been listed as endangered since 1967, the Service has never established critical habitat for the species. This forty-year delay effectively means that the Service has designated *zero* acres of habitat; this petition seeks to enlarge this insufficient designation. *See National Parks Conservation Ass'n v. Norton*, 324 F.3d 1229, 1238-39 (11<sup>th</sup> Cir. 2003) (explaining that "a pattern of inaction . . . can be said to mark the 'consummation' of the agency's decisionmaking process").

The Service must within 90 days of receiving a revision petition determine, and publish in the Federal Register, whether the petition "presents substantial scientific information indicating that the revision [to critical habitat] may be warranted." 16 U.S.C. § 1533(b)(3)(D)(ii); 50 C.F.R. 424.14(c); *see also* Pub. L. 97-304 § 2(b)(2) (Oct. 13, 1982) (providing that any proposals to "designate critical habitat for a species that was determined before [the 1982 amendments to the ESA] to be endangered or threatened shall be subject to the [revision of critical habitat procedures of § 1533(b)]"). If the Service does so find, it must publish a final decision on how it "intends to proceed with the requested revision" within 12 months after receiving the petition. *See* § 1533(b)(3)(D)(ii).

Second, in the alternative, if the Service were to depart from this well-settled process and treat this petition as one to designate critical habitat, it is still required to "promptly conduct a review in accordance with the Administrative Procedure Act and applicable Departmental regulations, and take appropriate action." *See* 50 C.F.R. § 424.14(d); *see also* 50 C.F.R. § 414.12(f) ("Critical habitat may be designated for those species listed as threatened or endangered but for which no critical habitat has been previously designated."). Were it to treat this petition in that way, the Service would necessarily be acknowledging that it has not, formally or constructively, designated any critical habitat for the panther – even though the panther's habitat is badly threatened – for forty-two years.

That failure, in turn, violates the Service's duty to "seek to conserve endangered species . . . [and] utilize [its] authorities in furtherance of the [ESA]," *see* 16 U.S.C. § 1531(c)(1), and its duty to "carry[ ] out programs for the conservation of endangered species," *see* 16 U.S.C. § 1536(a)(1). 'Conservation' means "to use . . . all methods and procedures which

are necessary to bring an endangered species . . . to the point at which the measures provided pursuant to [the ESA] are no longer necessary.” 16 U.S.C. § 1532(3). The Supreme Court has made clear that this duty is to be undertaken with the utmost “seriousness,” *see Tenn. Valley Authority v. Hill*, 437 U.S. 153, 180-81 (1978), and there is no dispute that it applies to “[the Service’s] administration of the Endangered Species Act,” *see, e.g., Nat’l Wildlife Federation v. Norton*, 386 F. Supp. 2d 553, 567 (D. Vt. 2005). As the 11<sup>th</sup> Circuit has held, this is a “judicially reviewable obligation,” which simply cannot “excuse total inaction” of the sort at issue here. *Florida Key Deer v. Paulison*, 533 F.3d 1133, 1145-47 (11<sup>th</sup> Cir. 2008); *see also Sierra Club v. Glickman*, 156 F.3d 606, 617 (5<sup>th</sup> Cir. 1998) (describing this “clear statutory directive”); *Pyramid Lake Paiute Tribe of Indians v. U.S. Dep’t of the Navy*, 898 F.2d 1410, 1416-119 (9<sup>th</sup> Cir. 1990) (affirming that “agencies have affirmative obligations to conserve”); *Defenders of Wildlife v. Administrator*, 882 F.2d 1294, 1299 (8<sup>th</sup> Cir. 1989) (“The ESA thus imposes substantial and continuing obligations on federal agencies.”).

The Service’s failure to designate critical habitat for the Florida panther, even as the species has become steadily more imperiled by habitat loss, is plainly a violation of this duty to conserve because designating habitat is “necessary” to conserve the species. This dereliction must be considered either as an affirmative, and illegal, decision not to designate, *cf. National Parks Conservation Ass’n* 324 F.3d at 1238-39, or as an unreasonable, and unlawful, failure to act, *see id.* at 1239 (“[A]n administrative agency cannot legitimately evade judicial review forever by continually postponing any consequence-laden action”); *see also Telecomm. Res. & Action Ctr. v. Federal Comm. Comm’n*, 750 F.2d 70 (D.C. Cir. 1984) (discussing reviewability of agency delay). The Service must swiftly correct this failure by granting this petition.

ESA regulations provide that the Secretary must acknowledge receipt of all ESA-related petitions in writing within 30 days of receipt. 50 C.F.R. § 424.14(a).

This petition is also filed under the APA. Under that statute, all “interested person[s]” have “the right to petition for the issuance, amendment, or repeal of a rule,” including to revise or establish a critical habitat designation. *See* 5 U.S.C. § 553(e). The Secretary must not unlawfully withhold or unreasonably delay a response to such a petition. *See* 5 U.S.C. § 706(1); *see also Forest Guardians v. Babbitt*, 164 F.3d 1261, 1270-73 (10<sup>th</sup> Cir. 1998) (discussing these terms).

We petition the Service and the Department to take the following actions:

(1) Make all critical habitat-related determinations regarding the Florida panther on the basis of the “best scientific data available.” *See* 16 U.S.C. § 1533(b)(2). This scientific data is set out below and includes, but is not limited to:

(a) Randy Kautz et al., *How Much is Enough? Landscape-scale conservation for the Florida panther*, 130 *Biological Conservation* 113, 129 (2006) (‘Kautz et al. 2006’)

- (b) Cindy A. Thatcher, Frank T. van Manen, & Joseph D. Clark, *A Habitat Assessment for Florida Panther Population Expansion into Central Florida*, 90 *Journal of Mammalogy* 918, 918 (2009) ('Thatcher et al. 2009')
- (c) Andrew J. Whittle, Songlin Fei, & John Cox, *Black Bear and Florida Panther Habitat and the Effects of Climate Change*, Presentation in Florida's Wildlife: On the Frontline of Climate Change Conference (2008)
- (d) Andrew Whittle, David S. Maehr, Songlin Fei, & John Cox, *Global Climate Change and Its Effects on Large Carnivore Habitat in Florida*, Abstract in Florida's Wildlife: On the Frontline of Climate Change Conference (2008)
- (e) Cindy Thatcher et al., *Identifying Suitable Sites for Florida Panther Reintroduction*, 70 *Journal of Wildlife Management* 752 (2006)
- (f) Thatcher et al., *An Assessment of Habitat North of the Caloosahatchee River for Florida Panthers*, Final Report Submitted to the U.S. Fish and Wildlife Service (June 2006)
- (g) Larisa R.G. Desantis et al., *Sea-level rise and drought interactions accelerate forest decline on the Gulf Coast of Florida, USA*, 13 *Global Change Biology* 2349 (2007)
- (h) . Jane Comiskey et al., *Evaluating Impacts to Florida Panther Habitat: How Porous is the Umbrella?*, 3 *Southern Naturalist* 51 (2004)
- (i) Kristi MacDonald-Beyers & Ronald F. Labisky, *Influence of Flood Waters on Survival, Reproduction, and Habitat Use of White-Tailed Deer in the Florida Everglades*, 25 *Wetlands* 659 (2005)
- (j) Testimony of Dr. Reed Noss before the Subcommittee on National Parks of the Senate Committee on Energy and Natural Resources at 3 (Oct. 28, 2009)
- (k) Julia Harrington & Todd Walton Jr., *Climate Change in Coastal Areas in Florida: Sea Level Rise Estimation and Economic Analysis to Year 2080* (2008)
- (l) Todd Walton Jr., *Projected sea level rise in Florida*, 34 *Ocean Engineering* 1832 (2007)
- (m) U.S. Global Change Research Program, *Global Climate Change Impacts in the United States* (2009)
- (n) IPCC, *Climate Change 2007: Synthesis Report* (2007)
- (o) U.S. Climate Change Science Program, *The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity in the United States*, Synthesis and Assessment Product 4.3 (2008)
- (p) Lara Hansen & Jennifer Biringer et al., World Wildlife Federation, *Buying Time: A User's Manual for Building Resistance and Resilience to Climate Change in Natural Systems* (2003)
- (q) M.F.J. Taylor et al., *The Effectiveness of the Endangered Species Act: A Quantitative Analysis*, 55 *BioScience* 360, 362 (2005)

(2) At the earliest possible time, not later than 90 days from receiving this supplemental petition, find that this supplemental petition presents substantial scientific information indicating that a designation or revision of critical habitat determination for the Florida panther may be warranted, and promptly publish that finding in the Federal Register. See 16 U.S.C. § 1533(b)(3)(D)(i).

(3) At the earliest possible time, not later than 12 months from receiving this supplemental petition, determine how the Department and the Service intend to proceed with the requested designation or revision of critical habitat and publish notice of that intention in the Federal Register. *See* 16 U.S.C. § 1533(b)(3)(D)(ii).

(4) At the earliest possible time, give notice of intent to issue a regulation designating the Primary, Secondary, and Dispersal Zones identified by Kautz et al. 2006, the Duette Park, Avon Park, Fisheating Creek, and Babcock-Webb areas identified by Thatcher et al. 2009, and sufficient corridors to connect these regions, as identified by Thatcher et al, 2009, as critical habitat and publish this proposed regulation in the Federal Register. *See* 16 U.S.C. § 1533(b)(5).

(5) At the earliest possible time, publish this final critical habitat regulation in the Federal Register and implement that regulation. *See* 16 U.S.C. § 1533(b)(6).

(6) At the earliest possible time, revise the Florida panther Recovery Plan to account for climate change-related impacts on the Florida panther and, when critical habitat has been designated or revised, to reflect that designation. In addition, the Recovery Plan should be revised or amended to acknowledge the necessity of designating or revising the critical habitat designation for the Florida panther.

(7) Issue no incidental take permits, biological opinions, or habitat conservation plans, and take no other final agency actions, that could impact Florida panthers or the panther critical habitat areas identified by this supplemental petition until:

a) this supplemental petition is ruled on by the FWS; and b) critical habitat has been designated or revised in accordance with this petition.

## DISCUSSION

### I. Introduction

The South Florida habitat of the endangered Florida panther (*Puma concolor coryi*) is badly vulnerable to climate change. The best available science establishes that this region, at best, “provides just enough space to support a population that is barely viable demographically as long as the habitat base remains stable,”<sup>1</sup> and that “the small and geographically isolated panther population is vulnerable to stochastic events, such as extreme weather, disease, or a sudden loss of its prey base.”<sup>2</sup> The rising seas, stronger storms, and generalized habitat disruption associated with climate change are more than sufficient to threaten this population, as we demonstrate below.

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<sup>1</sup> Randy Kautz et al., *How Much is Enough? Landscape-scale conservation for the Florida panther*, 130 *Biological Conservation* 113, 129 (2006) (“Kautz et al. 2006”) (attached as Ex. 1).

<sup>2</sup> Cindy A. Thatcher, Frank T. van Manen, & Joseph D. Clark, *A Habitat Assessment for Florida Panther Population Expansion into Central Florida*, 90 *Journal of Mammalogy* 918, 918 (2009) (“Thatcher et al. 2009”) (attached as Ex. 2).

Secretary Salazar has recently made clear that the Department and the Service are “responsible for helping protect the nation from the impacts of climate change,” and must “conserve and manage fish and wildlife resources,” including “nearly 2,000 federally threatened and endangered species.” Secretarial Order No. 3289 § 1 (Sept. 14, 2009);<sup>3</sup> *see also* Executive Order of October 5, 2009 (directing all agencies to “participate actively” in climate change adaptation efforts). The Service and the Department have an important opportunity to fulfill those obligations here. If they do not act quickly to protect the fragile core habitat of the panther, along with less vulnerable refuges from climate change, the panther may face extinction.

This new threat exacerbates extensive existing habitat damage. Although the Florida panther has been listed as an endangered species for our forty years, *see* 32 Fed. Reg. 4,001, 4,001 (Mar. 11, 1967), the Service has never designated critical habitat for the species. Unsurprisingly, the panther’s habitat has become significantly diminished and fragmented.

To begin to address this problem, the Conservancy of Southwest Florida petitioned the Service on January 21, 2009, to finally designate critical habitat for the panther in South Florida.<sup>4</sup> That petition requested that the Service designate as critical habitat the Primary, Secondary, and Dispersal Zones identified by Kautz et al. in a 2006 paper, an area which extends generally from Everglades National Park to the south bank of the Caloosahatchee River.

On July 23, 2009, a broader coalition of citizens’ groups, including supporters of this supplemental petition, wrote to join the Conservancy’s petition.<sup>5</sup> The Service has not yet made a decision on these petitions.

The Service must act urgently to protect the panther’s habitat. We therefore again petition the Service to designate the Primary, Secondary, and Dispersal Zones as critical habitat for the Florida panther, for the reasons set out in the attached Conservancy petition, which we incorporate by reference.

In addition to those areas, however, the threat of climate change, and the need to establish panther populations outside of South Florida, mean that the Service must also designate critical habitat for the panther in other regions. We therefore also request that the Service designate as critical habitat the regions identified by Thatcher et. al, a team of United States Geological Survey and academic researchers, in a paper published in August 2009. These areas include:

- (1) The Avon Park, Duette Park, Fisheasting Creek, and Babcock-Webb regions north of the Caloosahatchee River identified by Thatcher et al. 2009.<sup>6</sup>

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<sup>3</sup> Attached as Ex. 3.

<sup>4</sup> This petition is attached as Ex. 4, and is incorporated into this petition by reference.

<sup>5</sup> This petition is attached as Ex. 5, and is incorporated into this petition by reference.

<sup>6</sup> *See* Thatcher et al. 2009 at 921, Fig. 4, & Table I.



- (2) Sufficient migration corridors, including those identified by Thatcher et al. 2009, to connect these regions to each other and to panther habitat south of the Caloosahatchee.

We also request that the Service revise the Recovery Plan to reflect climate-change impacts, and that it refrain from taking any action which may impact the panther or its habitat until climate impacts have been fully integrated into panther conservation planning.

We discuss the science supporting these designations in detail below.

## II. Climate Change and the Florida Panther

Florida panthers once ranged throughout the Southeast<sup>7</sup> but have been extirpated from almost all of their original habitat. South Florida's woods and wetlands – until recently relatively free of human pressure – offered a refuge. That refuge is now imperiled by accelerating climate change and ever-intensifying human development pressure, which are acting synergistically to imperil the panther's survival. Increasing habitat fragmentation, in particular, will make it increasingly difficult for panthers to move to protected areas to avoid climate-linked disasters, like storms and floods. The panther's prey base will also be diminished by climate change, further impairing their survival and recovery and the quality of their habitat.

The panther population is already teetering on the edge and climate change has the potential to push it over. As the Service's recent five-year review of the panther's status concluded, without even considering global warming's impacts, "[t]he Florida panther remains in danger of extinction throughout all or a significant portion of its range," because:

The panther continues to face numerous threats due to an increasing human population and habitat development. Isolation, reduced population size, and inbreeding have resulted in loss of genetic variability, and because the panther occurs as a single isolated population, a catastrophic event such as a disease outbreak could be devastating.<sup>8</sup>

Climate change, of course, portends a long series of 'catastrophic event[s]'. The low-lying expanse of South Florida, which is just a few feet above rising seas and juts into the paths of major hurricanes, places the panther directly in harm's way. If the panther must cling to habitat which is already tattered by burgeoning development, it will have little chance of withstanding these new threats.

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<sup>7</sup> See, e.g., U.S. Fish and Wildlife Service, *Florida Panther Recovery Plan, 3<sup>rd</sup> Revision* (2008) ('Panther Recovery Plan') at 12 (attached as Ex. 6).

<sup>8</sup> U.S. Fish and Wildlife Service, *Florida Panther 5-Year Review: Summary and Evaluation* (2009) ('Panther Five-Year Review') at 19 (attached as Ex. 7).

Below, we outline the overwhelming scientific consensus documenting the climate crisis, its impacts upon the panther, and the need to broadly protect its habitat.

### A. The Climate Crisis

The intensifying climate crisis makes ever clearer that action to protect the panther is warranted. The Nobel-Prize-winning Intergovernmental Panel on Climate Change ('IPCC'), which comprises thousands of scientists working together all around the world, has been sounding ever more urgent warnings about accelerating global warming. The IPCC's most recent reports paint a grim picture of a world of rising seas and stronger storms. The IPCC has determined that:

- "Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global sea level."<sup>9</sup>
- "For the next two decades a warming of about 0.2 °C per decade is projected [by a wide range of greenhouse gas emission scenarios]. . . . Continued [greenhouse gas] emissions at or above current rates would cause further warming and induce many changes in the global climate system during the 21<sup>st</sup> century that would very likely be larger than those observed during the 20<sup>th</sup> century."<sup>10</sup> The IPCC projects upper-end warming by the end of the century at 6.4 °C.
- "Mountain glaciers and snow cover have declined on average in both hemispheres. Widespread decreases in glaciers and ice caps have contributed to sea level rise. . . . [L]osses from the ice sheets of Greenland and Antarctica have very likely contributed to sea level rise over 1993 to 2003."<sup>11</sup>
- "Global sea level rose at an average rate of 1.8 mm per year over 1961 to 2003. The rate was faster over 1993 to 2003: about 3.1 mm per year. . . . The total 20<sup>th</sup>-century rise is estimated to be .17 m."<sup>12</sup>
- Depending on how quickly emissions are controlled, the IPCC estimates global average sea level rise of between roughly 0.20 and 0.59 m by the end of the century.<sup>13</sup>
- "Anthropogenic warming and sea level rise would continue for centuries due to the time scales associated with climate processes and feedbacks, even if [greenhouse gas] concentrations were to be stabilised."<sup>14</sup>

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<sup>9</sup> IPCC, *Climate Change 2007: Synthesis Report* at 30 (2007) ('*IPCC Synthesis*') (attached as Ex. 8).

<sup>10</sup> *Id.* at 45.

<sup>11</sup> IPCC, Summary for Policymakers, in *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* ('*IPCC Summary for Policymakers*') at 5 (2007) (attached as Ex. 9).

<sup>12</sup> *Id.* at 5-6.

<sup>13</sup> *Id.* at 13.

<sup>14</sup> *IPCC Synthesis* at 46.

- “[I]t is likely that future tropical cyclones (typhoons and hurricanes) will become more intense, with larger peak wind speeds and more heavy precipitation associated with ongoing increases of tropical sea surface temperatures.”<sup>15</sup>
- The combination of stronger storms and rising seas will amplify each others’ effects, as storm surge drives high seas even higher. “Extreme sea levels occur mainly in the form of storm surges generated by tropical or extra tropical cyclones,” and these extreme events appear to be increasing.<sup>16</sup>
- Finally, back on land, erratic weather will cause other problems. “It is very likely that hot extremes, heat waves and heavy precipitation events will become more frequent.”<sup>17</sup> As a result, “[h]eat waves and floods are projected in many regions and would have mostly adverse impacts, including increased water stress and wild fire frequency, . . . increased flood risk and extreme high sea level, and damage to infrastructure.”<sup>18</sup>

The U.S. Global Change Research Program (‘GCRP’) confirms that these changes are occurring in the United States and that they may, in some instances, be even more severe than the IPCC predicts. Predicting warming of between 2° and 11.5 °F by the end of the century,<sup>19</sup> the GCRP documents rising seas, stronger storms, and increasingly extreme floods and droughts.<sup>20</sup> Gathering the most recent data, the GCRP explains that the IPCC’s sea level rise estimates were quite conservative, writing:

More recent research has attempted to quantify the potential contribution to sea-level rise from the accelerated flow of ice sheets to the sea or to estimate future sea level based on its observed relationship to temperature. The resulting estimates exceed those of the IPCC, and the average estimates under higher emissions scenarios are for sea-level rise between 3 and 4 feet [that is, over 1 m, or roughly double the IPCC’s high-end projection] by the end of this century.<sup>21</sup>

All of these changes have the potential to devastate species and ecosystems. The IPCC, for instance, predicts that even modest warming of between 1.5 -2.5 °C would place “[a]pproximately 20 to 30% of [the] plant and animal species” which it has studied “at increased risk of extinction”; higher temperatures would cause “major changes in ecosystem structure and function, species’ ecological interactions and shifts in species’

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<sup>15</sup> IPCC Summary for Policymakers at 15.

<sup>16</sup> N.A. Bindoff et al., Observations: Oceanic Climate Change and Sea Level, in *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* at 414 (2007) (attached as Ex. 10).

<sup>17</sup> IPCC Synthesis at 46.

<sup>18</sup> *Id.* at 65.

<sup>19</sup> U.S. Global Change Research Program, *Global Climate Change Impacts in the United States* (‘Global Climate Change Impacts in the United States’) at 24 (2009) (attached as Ex. 11).

<sup>20</sup> See, e.g., *id.* at 19-26, 27-40.

<sup>21</sup> *Id.* at 25. See also U.S. Climate Change Science Program, *Coastal Sensitivity to Sea-Level Rise: A Focus on the Mid-Atlantic Region*, Synthesis and Assessment Product 4.1 at 2 (2009) (Observing that “[r]ecent studies suggest the potential for a meter or more of global sea-level rise by the year 2100, and possibly several meters within the next several centuries.”) (attached as Ex. 12).

geographical ranges, with predominantly negative consequences for biodiversity and ecosystem goods and services.”<sup>22</sup>

U.S. government researchers have similarly found that “[c]limate variability and change have many impacts on terrestrial and marine ecosystems.”<sup>23</sup> Dramatic changes in habitat quantity and quality will threaten many species.<sup>24</sup> Existing stresses will also become harder to bear as new climate pressures ramp up.<sup>25</sup> Experts expect species to attempt to adjust to these climate-linked challenges by moving north, or uphill, to reach cooler temperatures.<sup>26</sup> Natural and human-made barriers – rivers, roads, and sprawling developments – may intercept many of these migrations, leading to extinctions or population declines. Indeed, dispersing panthers are already facing serious mortality from roads and traffic associated with development; these problems will worsen as climate change intensifies.

## **B. Consequences for South Florida and the Florida Panther**

The Florida panther is acutely exposed to these threats. The population remaining in South Florida is highly unlikely to survive under global warming unless the Department and the Service provide the panther with protected core habitat and room to escape rising seas and powerful storms.

### **i. Climate Change in South Florida**

The Southeast, including South Florida, will be buffeted by waves of climate-linked stressors over the next century. Most notably, Florida will face higher sea levels, potent hurricanes, and powerful floods and droughts. These changes, in fact, pose particularly dire risks to panther habitat in South Florida, which is particularly exposed by virtue of its low-lying position along major hurricane tracks.

Just how high the seas will rise is not yet entirely certain, but it is clear that Florida is in for a difficult century. To recap, the IPCC global estimate ranges up to about 2 feet of rise (or 0.59 m). The GCRP, working off of more recent data, predicts an average national rise of between 3 and 4 feet (that is, in the neighborhood of 1.2 m), and suggests that the seas could rise even higher, offering only the cold comfort that a rise larger than 6.5 feet (about 2 m) is unlikely by century’s end.<sup>27</sup> Even the most modest state-specific projections point to real trouble: a recent Florida State University study, based upon existing tide gauge data, and describing itself as “the lower-end [sea level rise] scenario,”

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<sup>22</sup> *IPCC Synthesis* at 48.

<sup>23</sup> U.S. Climate Change Science Program, *The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity in the United States*, Synthesis and Assessment Product 4.3 (*Effects of Climate Change on Biodiversity*) at 18 (2008) (attached as Ex. 13).

<sup>24</sup> *Id.* at 159-74.

<sup>25</sup> *Id.* at 184.

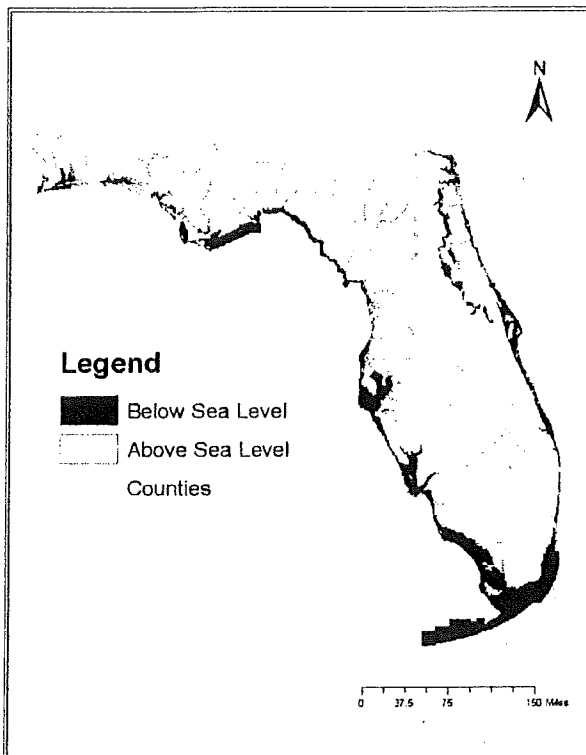
<sup>26</sup> *Id.* at 153, 156-57.

<sup>27</sup> *Id.* See also Testimony of Dr. Reed Noss before the Subcommittee on National Parks of the Senate Committee on Energy and Natural Resources at 3 (Oct. 28, 2009) (attached as Ex. 14).

suggests that, by 2080, Florida may see a rise of between 0.82 and 1.15 feet (that is, up to about .33 m).<sup>28</sup>

These rising seas have the potential to swamp South Florida over time, as Figure 1<sup>29</sup> demonstrates. Even the lower-end projections would nibble away at Florida's coasts, send storm surges further inland, and help turn fresh water aquifers to salt. Higher-end sea level rise numbers – which are steadily becoming more plausible -- would simply inundate large sections of the state.

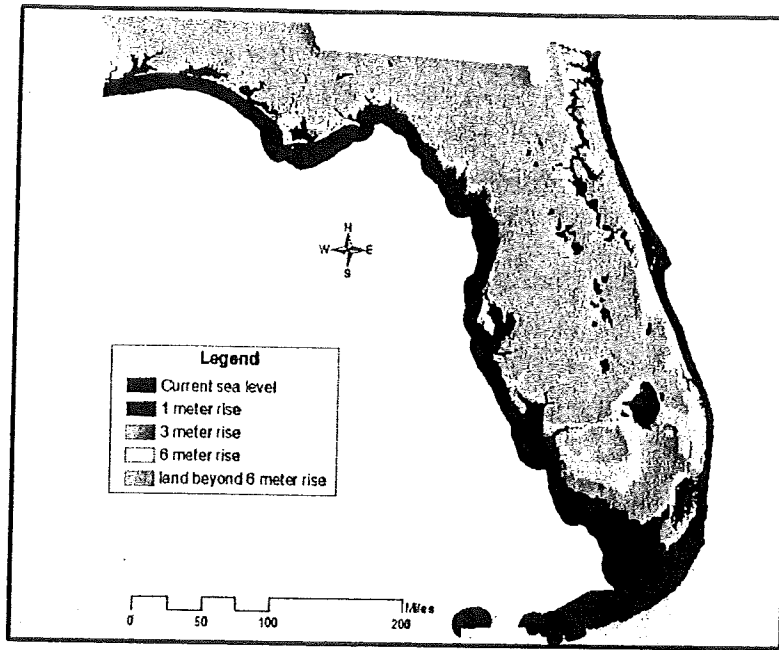
*Figure 1: Sea Level Rise and South Florida (0.5 m, 1 m, and 3 m)*



*0.5 m sea level rise.*

<sup>28</sup> Julia Harrington & Todd Walton Jr., *Climate Change in Coastal Areas in Florida: Sea Level Rise Estimation and Economic Analysis to Year 2080* at 13 (2008) (attached as Ex. 15); see also Todd Walton Jr., *Projected sea level rise in Florida*, 34 *Ocean Engineering* 1832 (2007) (attached as Ex. 16).

<sup>29</sup> Figures drawn from Andrew J. Whittle, Songlin Fei, & John Cox, *Black Bear and Florida Panther Habitat and the Effects of Climate Change*, Presentation in Florida's Wildlife: On the Frontline of Climate Change Conference (2008) (attached as Ex. 17) and the Testimony of Dr. Reed Noss. .



*1, 3, and 6 m sea level rise.*

Rising seas will intensify the effects of strengthening hurricanes, as the GCRP explains:

As sea level rises, coastal shorelines will retreat. Wetlands will be inundated and eroded away, and low-lying areas including some communities will be inundated more frequently – some permanently – by the advancing sea. . . . The salinity of estuaries, coastal wetlands, and tidal rivers is likely to increase in the southeastern coastal zone, thereby altering coastal ecosystems and displacing them further inland if no barriers exist. . . . Compared to the present coastal situation, for which vulnerability is quite high, an increase in hurricane intensity will further affect low-lying coastal ecosystems and coastal communities along the Gulf and South Atlantic coastal margin. An increase in intensity is very likely to increase inland and coastal flooding, coastal erosion rates, wind damage to coastal forests, and wetland loss.<sup>30</sup>

This increase in hurricane intensity is already occurring:

The destructive potential of Atlantic hurricanes has increased since 1970, correlated with an increase in sea surface temperature. . . . An increase in average summer wave heights along the U.S. Atlantic coastline since 1975 has been attributed to a progressive increase in hurricane power. The intensity of Atlantic hurricanes is likely to increase during this century with higher peak wind speeds, rainfall intensity, and storm surge height and strength.<sup>31</sup>

These stronger storms will interact with the sea level increase “to be among the most costly consequences of climate change for the region.”<sup>32</sup>

<sup>30</sup> *Id.* at 114-15.

<sup>31</sup> *Global Climate Change Impacts in the United States* at 112.

<sup>32</sup> *Id.* at 114.

And yet, perversely, because storms will be stronger but more capricious, the Southeast will also experience brutal droughts even as it becomes more flood-prone:

There has been an increase in heavy downpours in many parts of the region, while the percentage of the region experiencing moderate to severe drought increased over the past three decades. The area of moderate to severe spring and summer drought has increased by 12 percent and 13 percent, respectively, since the mid-1970s. . . . [T]he frequency, duration and intensity of droughts are likely to continue to increase.<sup>33</sup>

These combined stresses threaten the integrity of natural systems. Floridian habitat is already being damaged by climate-linked effects as rising water and severe droughts whipsaw coastal forests. Salt water and storms kill trees, which then fail to regenerate as drought years cut off water supplies.<sup>34</sup> Researchers are already documenting declines, even with today's relatively low sea level rise, and state baldly that "[t]he Gulf of Mexico's coastal ecosystems are seriously threatened by ongoing sea-level rise," which is already occurring at least 20 times the historic rate in the region.<sup>35</sup> They emphasize that "[w]ith expected increases in the rate of sea-level rise coupled with increasing drought frequencies due to global climate change, accelerated rates of coastal forests disappearance are likely and may already be occurring."<sup>36</sup>

Despite these dire conditions, the population of Florida is still expected to boom – growing by nearly 80%, or over 12 million people, from 2000 to 2030.<sup>37</sup> Thus, even as ecosystems are battered by climate change, they will also grow more fragmented and face ever-increasing human-caused stresses.

The upshot is that Florida – and especially South Florida, much of which is only a few feet above sea level – is likely to be crowded, hot, alternately dry and flooded, battered by severe hurricanes, and, ultimately, under water.

## **ii. Effects of Climate Change on Panther Survival and Panther Habitat in South Florida**

These new and synergistic stresses are bad news for the remnant panther population, which can ill afford any additional pressure. The panther has already been limited to less than 5% of its historic range, which continues to shrink under development pressure even though the Service recognizes "the importance of habitat conservation across large landscapes for achieving a viable panther population."<sup>38</sup> If the panther is forced to subsist on a shrinking island of viable habitat, beset by development and unable to respond to the climate crisis, its future is very dim.

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<sup>33</sup> *Id.* at 111-12.

<sup>34</sup> See Larisa R.G. Desantis et al., *Sea-level rise and drought interactions accelerate forest decline on the Gulf Coast of Florida, USA*, 13 *Global Change Biology* 2349 (2007) (attached as Ex. 18).

<sup>35</sup> See *id.* at 2349-50.

<sup>36</sup> *Id.* at 2358-59.

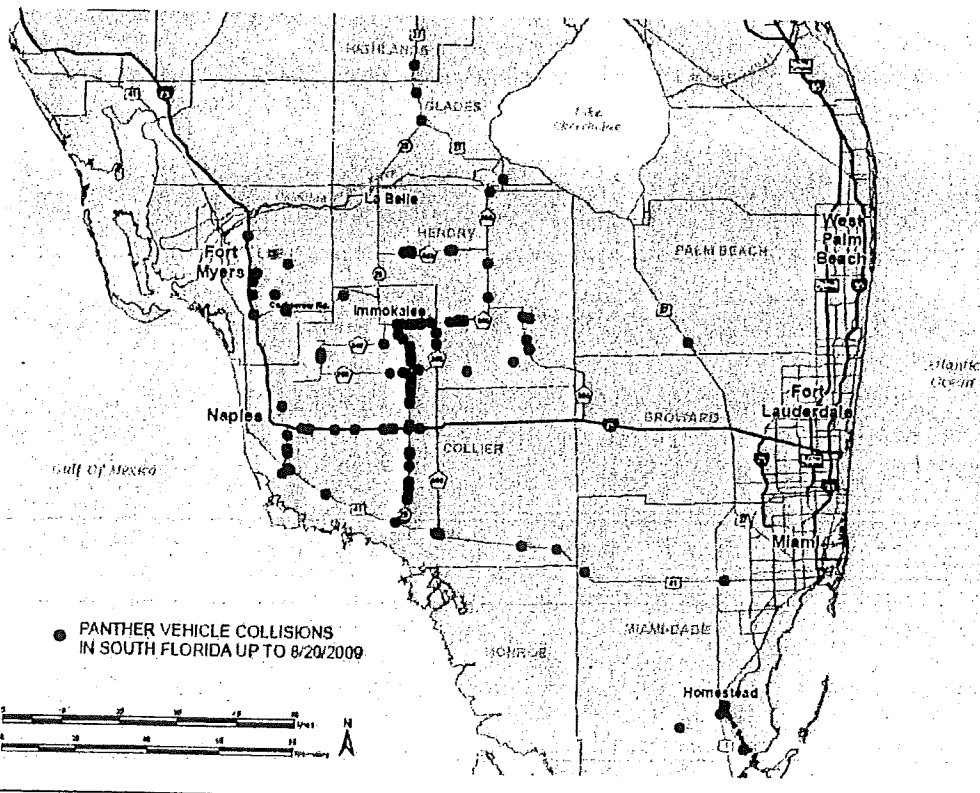
<sup>37</sup> <http://www.census.gov/population/projections/10PyrmFL3.pdf>.

<sup>38</sup> See Recovery Plan at 26.

Panthers face major habitat loss even without climate change. As the Service puts it, “[h]abitat loss, fragmentation, and degradation, and associated human disturbance are the greatest threats to panther survival and among the greatest threats to its recovery.”<sup>39</sup> Habitat destruction is already rapidly increasing – doubling or tripling in speed in the last decade.<sup>40</sup> As the Service has explained, “[r]apid development in southwest Florida has compromised the ability of landscapes to support a self-sustaining panther population.”<sup>41</sup> Not only does this development directly devour prime panther habitat, it makes it harder for panthers to move around to escape stressors – such as a stretch of forest that has been blown down by hurricane winds – and more difficult for populations to interact. “As a result,” according to the Service, “small populations may become isolated, subjecting them to demographic and stochastic factors that reduce their chances for survival and recovery.”<sup>42</sup>

In addition to habitat destruction, panthers are also subject to many other forms of disturbance, including a troubling number of automobile fatalities. Roads crisscrossing existing habitat regularly see panther deaths. Increasing development pressure will, of course, bring even more traffic, and more fatalities, to the beleaguered panther population.

Figure 2: Panther Traffic Fatalities in South Florida



<sup>39</sup> Recovery Plan at 36.

<sup>40</sup> *Id.* at 38.

<sup>41</sup> Five-Year Review at 14.

<sup>42</sup> *Id.*



Indeed, the South Floridian Primary, Secondary, and Dispersal Zones identified by Kautz et al. in 2006 can, according to that research, support a viable panther population only if:

- (1) further loss of habitat in all 3 zones, but especially in the primary zone, is minimized,
- (2) the existing population will expand into areas of the Secondary Zone where habitat conditions are presently suboptimal and panthers are only occasionally known to occur, and
- (3) unforeseen catastrophes do not occur.<sup>43</sup>

Other researchers have likewise emphasized the vulnerability of the “small and geographically isolated panther population” to any new pressures.<sup>44</sup>

As climate change triggers further loss of habitats, forecloses expansion into other areas, along with any number of “unforeseen catastrophes,” it will become exceedingly difficult, if not impossible, to maintain panthers in their current habitat – and especially so if this invaluable territory is not protected from other stressors with a critical habitat designation.

Recent analyses demonstrate just how dramatic these challenges are. Researchers have shown that a 1 m rise in sea level – an increase well within the range of possibility over the next century – would swamp 29% of existing panther habitat.<sup>45</sup> These “consequences are particularly dire for the panther[,] which has no other populations outside of low-lying south Florida.”<sup>46</sup>

Even if sea level rise in the next century is lower, and so chips away less dramatically at the remnant panther habitat, the cats will still be battered by the serious and accelerating impacts of climate change – droughts, hurricanes, and floods – which will threaten their survival and that of the animals they prey upon. One study, for instance, has documented a crash in the white-tailed deer population, an important panther food source, due to severe flooding caused by a series of strong storms.<sup>47</sup> That single flood wiped out half of all the deer being studied.<sup>48</sup> If such floods become more common, as is likely, panthers may well go hungry. Collapses in prey populations, added to direct habitat damage, bodes very ill for the panther.

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<sup>43</sup> Kautz et al. 2006 at 131; *see also* Rebecca P. Meegan & David S. Maehr, *Landscape Conservation and Regional Planning for the Florida Panther*, 1 *Southeastern Naturalist* 217 (2002) (attached as Ex. 19)

<sup>44</sup> *See, e.g.*, Thatcher et al. 2009 (observing that “[m]aintaining current panther numbers, let alone expanding them, is a daunting conservation task in the light of current land use patterns”).

<sup>45</sup> *See* Andrew Whittle, David S. Maehr, Songlin Fei, & John Cox, *Global Climate Change and Its Effects on Large Carnivore Habitat in Florida*, Abstract in *Florida’s Wildlife: On the Frontline of Climate Change Conference* (2008) (‘Whittle et al. 2008’) (attached as Ex. 20).

<sup>46</sup> *Id.*

<sup>47</sup> *See* Kristi MacDonald-Beyers & Ronald F. Labisky, *Influence of Flood Waters on Survival, Reproduction, and Habitat Use of White-Tailed Deer in the Florida Everglades*, 25 *Wetlands* 659 (2005) (attached as Ex. 21).

<sup>48</sup> *See id.* at 662.

The panther will have a better chance of surviving these disturbances if its habitat is not also being degraded by development and other more direct sources of stress. So, as climate change fragments and degrades panther habitat, the Service must respond by safeguarding as much of the current habitat base as possible. And, to ensure that panthers have the room they need to weather the stormy future, it also must open migration routes towards higher ground. As recent research puts it, “[w]ithout rapid conservation actions that establish populations to the north, we predict that the Florida panther may go extinct in the wild due to climate change effects.”<sup>49</sup>

The Service has reached similar conclusions. In recent biological opinions, it directly acknowledges the climate threat, writing:

The potential for rapid climate change poses a significant challenge for fish and wildlife conservation. . . . Highly specialized or endemic species are likely to be most susceptible to the stresses of changing climate.

Whittle et al. (unpublished data 2008) applied several prominent climate change models to panther habitat in southwest Florida. Their review indicated a climate change-induced sea level rise of 1 meter (3 feet) will reduce southwest Florida panther habitat by 29 percent, at 3 meters (10 feet) by 62 percent, and at 5 meters (16 feet) by 90 percent. The consequences would be particularly dire for the panther which has no other populations outside of low-lying South Florida. Their cost surface analyses identified likely migration routes that would link the south Florida panther population to suitable habitat to the north. However, without rapid conservation actions that establish a population to the north, they predict that the Florida panther may go extinct in the wild due to climate change.

Climatic changes in south Florida could exacerbate current land management challenges involving habitat fragmentation, urbanization, invasive species, disease, parasites, and water management (Pearlstine 2008). Global warming will be a particular challenge for endangered, threatened, and other ‘at risk’ species. . . .

[M]ost climate change researchers agree with the findings in the IPCC Report (2007) which estimates a 90 percent probability of 7 to 23 inches of sea level rise by 2100. Scientific evidence that has emerged since the publication of the IPCC Report (2007) indicates an increase in the speed and scale of the changes affecting the global climate. Important aspects of climate change seem to have been underestimated and the resulting impacts are being felt sooner. . . . This process could open the gates to rapid and abrupt climate change, rather than the gradual changes that have been currently forecast.<sup>50</sup>

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<sup>49</sup> Whittle et al. 2008.

<sup>50</sup> U.S. Fish and Wildlife Service, Biological Opinion for the Construction and Operation of the Fort Myers Mine No. 2 Project, 41420-2006-F-0247 at 17-19 (Feb. 12, 2009) (attached as Ex. 22); *see also* U.S. Fish and Wildlife Service, Biological Opinion for the widening of Oil Well Road, 41420-2006-F-1011 at 2-4 (making similar points) (Feb. 26, 2009) (attached as Ex. 23).

In sum, as the Service itself recognizes, climate change will profoundly imperil the Florida panther. The big cats need a protected refuge in South Florida, and migration corridors to ensure that that refuge does not become a trap. As we next discuss, if the Service acts quickly it can still ensure that the panther can make it to higher ground.

### III. Critical Habitat Designation and the Service's Obligations

The best available science and all applicable law support taking action to protect the panther from climate change.

The Service and the Department of Interior have recently acknowledged their obligation to respond to the climate crisis. The Department recognizes that climate change's "dramatic effects" require it to "take the lead in protecting our country's water, land, fish, and wildlife." Secretarial Order No. 3289 § 1. It has committed to "landscape-level" planning to respond to the crisis, including providing for "wildlife migration and related needs for new migration corridors" for species like the panther. *Id.* § 3(c). The Fish and Wildlife Service likewise views the "climate crisis as one of enormous consequence and challenge for fish and wildlife conservation," which, "if unabated will cause abrupt ecosystem changes and widespread species extinctions."<sup>51</sup> It acknowledges that it has "the opportunity and the responsibility to help tip the balance in favor of aggressive action" to safeguard the nation's biodiversity.<sup>52</sup> Among other goals, it is committed to "ensure that climate change is addressed in existing on-the-ground projects to promote habitat connectivity among protected areas."<sup>53</sup>

These goals are consistent with core scientific climate adaptation principles. These principles boil down to two basic priorities: (1) protect existing habitat and (2) give species room to move. As the U.S. Climate Change Science Program (a component of the GCRP) puts it, adaptation relies, on the one hand, upon "protecting key ecosystem features," and "reducing anthropogenic stressors" – such as "pollution [and] fragmentation" – "that hinder the ability of species or ecosystems to withstand climatic events."<sup>54</sup> The Program also makes clear the importance of providing "[r]efugia" – "areas that are less affected by climate change . . . as destinations for climate-sensitive migrants," and the need to ensure that "there will be areas that survive and provide a source for recovery."<sup>55</sup>

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<sup>51</sup> U.S. Fish and Wildlife Service, *Rising to the Challenge: Strategic Plan for Responding to Accelerating Climate Change* (2009) ('*Rising to the Challenge*') at 4, 6 (attached as Ex. 24).

<sup>52</sup> *Id.* at 17; see also U.S. Fish and Wildlife Service, *Appendix: 5-Year Action Plan for Implementing the Climate Change Strategic Plan* (2009) ('*5-Year Action Plan*') at 5-6 (committing to conduct climate habitat and population vulnerability assessments for endangered species and to incorporate climate change in decisionmaking) (attached as Ex. 25).

<sup>53</sup> *5-Year Action Plan* at 8.

<sup>54</sup> U.S. Climate Change Science Program, *Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources*, Synthesis and Assessment Product 4.4 at 2, 9.1-9.25 (2008) (attached as Ex. 26).

<sup>55</sup> *Id.* at 2. See also Lara Hansen & Jennifer Biringer et al., World Wildlife Federation, *Buying Time: A User's Manual for Building Resistance and Resilience to Climate Change in Natural Systems* (2003) at 11-12 (emphasizing the need to "protect adequate and appropriate space" and to "limit all non-climate stresses") (attached as Ex. 27).

These principles warrant designating critical habitat for the Florida panther, as clearly demarcated critical habitat would have important conservation benefits. The Congressional Research Service has repeatedly documented these benefits, which include providing important guidance to landowners, ensuring detailed consultation before federal agencies act, providing important information for habitat conservation planning, and driving the preparation of recovery plans.<sup>56</sup> Without critical habitat, conservation planners lack the detailed spatial conservation information they require to prepare effective, scientifically rigorous plans.<sup>57, 58</sup> These advantages are not theoretical: A recent peer-reviewed study of 1,095 listed species demonstrates that “species with critical habitat for two or more years were less than half as likely to be declining [early on], and more than twice as likely to be improving [later on], as species without critical habitat.”<sup>59</sup>

We request that the Service and the Department designate several areas, as outlined below. *Cf.* 16 U.S.C. § 1533(a)(3)(A) (providing that habitat shall be designated “to the maximum extent prudent and determinable”).

#### **A. Designate the Primary, Secondary, and Dispersal Zones as Critical Habitat**

The Service must begin by protecting the core breeding range of the panther – the Primary and Secondary Zones – and the Dispersal Zone, a smaller region which connects the core breeding range to the rest of Florida. These lands, which likely support the only remaining breeding panther population, must be protected from the stresses that render them steadily less able to protect the panther from climate-linked threats. In the absence of a critical habitat designation, development pressure continues to mount on this habitat, including the vast proposed ‘Town of Big Cypress’ development, which, as the Conservancy of Southwest Florida’s petition explains, would destroy thousands of acres of Primary Zone habitat.<sup>60</sup>

The Primary and Secondary Zones are of a particularly high priority, and contain the “physical or biological features” which are “essential to the conservation of the species”

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<sup>56</sup> See, e.g., Pamela Baldwin, CRS Report for Congress, *Designation of Critical Habitat under the Endangered Species Act* at 3-5 (Apr. 11, 2005) (attached as Ex. 28); Pamela Baldwin, CRS Report for Congress, *The Role of Designation of Critical Habitat under the Endangered Species Act* at 1-4 (July 16, 1999) (attached as Ex. 29).

<sup>57</sup> *Cf. id.*; see also 74 Fed. Reg. 8,616, 8,624 (Feb. 25, 2009) (Lynx critical habitat listing, in which the Service explains that “critical habitat designation identifies land on which are found the physical and biological features essential to the conservation of the species,” which “is important to guide management and provide for the recovery of the species,” and to “educate the public and State and local governments regarding the potential conservation value of certain areas”).

<sup>58</sup> Of course, such plans do not and cannot substitute for critical habitat designation itself, and the mere intent to prepare a habitat conservation plan certainly does not do so. See 74 Fed. Reg. at 8,627 (declining to waive critical habitat designation for an area where a plan was being developed but had not been finalized).

<sup>59</sup> M.F.J. Taylor et al., *The Effectiveness of the Endangered Species Act: A Quantitative Analysis*, 55 *BioScience* 360, 362 (2005) (attached as Ex. 30).

<sup>60</sup> See Jan. 21, 2009 petition at 39-41; see also Alex Halperin, ABC News, *Plight of Florida's Panthers at Center of Development Debate* (Sept. 20, 2009) (attached as Ex. 31)

and which “may require special management considerations or protection.” *See* 16 U.S.C. § 1532(5)(A)(i). They are the most important stage for the various habitat functions Service regulations and the ESA recognize as critical. They offer the panther space for “individual and population growth,” to meet their “nutritional or other physiological requirements,” to find “cover or shelter,” and are the only sites known to host “breeding, reproduction, [and] rearing of offspring.” *See* 50 C.F.R. § 424.12(b). In short, they host the “primary constituent elements” – among them the spawning sites, feeding sites, seasonal wetlands, and forests – that the panther needs to survive. *See id.* They also include the critical ‘Addition Lands’, a region in the northeast of the Big Cypress National Preserve which sees heavy use by panthers, and which must be particularly carefully protected. Without attentive management, however, they are likely to become ever more damaged and insufficient, as we have demonstrated.

To withstand climate pressure, and to expand their population and range sufficiently to survive, panthers must also be able to disperse to other protected habitat from the Primary and Secondary Zones – a real hurdle without critical habitat in place for these corridors and new population centers. Indeed, as the Service has explained, even without taking climate change into consideration, “[t]here is insufficient habitat in south Florida to sustain a viable panther population and population expansion into south-central Florida will be difficult.”<sup>61</sup> Consistent with the Secretarial Order and the Recovery Plan, it must act now to protect “wildlife migration and related needs for new migration corridors.” *See* Secretarial Order No. 3289 § 3.

The Dispersal Zone, which connects the core breeding habitat to a crossing point of the Caloosahatchee River into south-central Florida already used by panthers is the most obvious of these migration corridors.<sup>62</sup> Kautz et al. 2006 emphasize that this area is “intended to function as a landscape linkage maintaining connectivity to potentially suitable habitat” north of the river, but that “[d]ue to the rapid pace of urban development in the region, the opportunity for panthers to disperse out of south Florida eventually will be precluded if a landscape connection cannot be maintained.”<sup>63</sup> Given that the Service recognizes that the South Florida habitat is already not sufficient to allow the panther to survive, much less in the climate-altered future, losing this connection could doom the panther. This habitat, too, provides panthers with essential space for “individual and population growth,” to shelter, feed, and breed, and to seek “protect[ion] from disturbance.” *See* 50 C.F.R. § 424.12(b). But, without management action to protect it, it is likely to vanish.

In sum, the Primary, Secondary, and Dispersal Zones complex must be designated as critical habitat to buffer panthers from the worst effects of climate change and to allow them to migrate in response to climate and other stressors, eventually building a larger

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<sup>61</sup> Recovery Plan at 86.

<sup>62</sup> *See id.* at 92; *see also* Kautz et al. 2006 at 133.

<sup>63</sup> Kautz et al. 2006 at 133.

and more sustainable population.<sup>64</sup> These specific areas are “essential to the conservation of the species” and require careful management to preserve. *Cf.* 16 U.S.C. § 1532(5)(A)(i).

### **B. Designate Habitat North of the Caloosahatchee River**

The South Florida habitat is necessary, but not sufficient, to ensure the panther’s survival. The Primary, Secondary, and Dispersal Zones will best fulfill their purpose of allowing a protected population to grow and expand if panthers have somewhere to expand *to* north of the Caloosahatchee as floodwaters and storms disrupt their South Florida habitat. We therefore also petition the Service to designate appropriate habitat north of the river, along with appropriate connecting corridors to make migration possible.

The Service’s best guide to this habitat is a peer-reviewed study, published by Thatcher et al. in August of this year and based upon a Service-commissioned report finalized in 2006.<sup>65</sup> The research was motivated by a sense of urgency. As Thatcher et al. explain in their 2009 paper:

Unoccupied panther habitat in southern Florida is being converted to agricultural and urban land uses at a rapid rate. In addition, the small and geographically isolated panther population is vulnerable to stochastic events such as extreme weather, disease, or a sudden loss of its prey base. Consequently, establishment of panther populations outside southern Florida should be a high priority to improve the likelihood of survival of the subspecies. Indeed, one of the objectives of the Florida panther recovery plan is to expand the panther range into central Florida (i.e., north of the Caloosahatchee River) in an effort to increase the probability of long-term persistence of the species.<sup>66</sup>

Climate change, of course, only sharpens this need.

To determine where such range expansion could occur, the researchers essentially followed the panthers. First, they drew upon a decade of radio-collar telemetry data to determine the characteristics of home ranges presently being used by the panthers.<sup>67</sup> Then, they used a sophisticated statistical analysis to identify areas with similar characteristics north of the river, and to identify ‘least-cost’ migration corridors between these habitat patches.<sup>68</sup> Based upon these results, they identified four large patches of habitat – some of which are larger than existing habitat patches south of the river – that could support panthers. These patches border the north bank of the Caloosahatchee,

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<sup>64</sup> *Cf. id.* (observing that “should a breeding population become established north of the Caloosahatchee . . . a landscape connection would facilitate exchange of dispersing individuals between the two sub-population, thereby increasing genetic and demographic viability of the entire south Florida population”).

<sup>65</sup> See Thatcher et al. 2009; see also Thatcher et al., *An Assessment of Habitat North of the Caloosahatchee River for Florida Panthers*, Final Report Submitted to the U.S. Fish and Wildlife Service (June 2006) (‘Thatcher FWS Report’) (attached as Ex. 32).

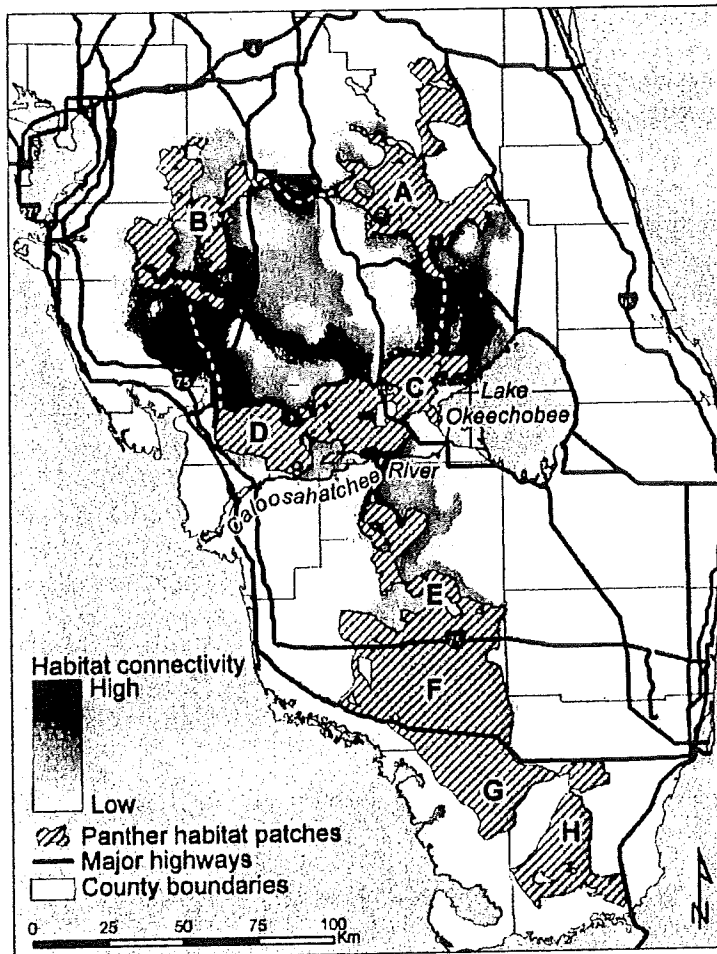
<sup>66</sup> Thatcher et al. 2009 at 918.

<sup>67</sup> *Id.* at 919-20.

<sup>68</sup> *Id.* at 920-21.

extending north to embrace two large areas in the eastern and western portions of the region. If the Service does not act now to protect these lands via a critical habitat designation, consistent with the Secretarial Order and with its duties under the ESA, the panther is likely to be marooned south of the Caloosahatchee.

Figure 3: Potential Panther Habitat North of the Caloosahatchee<sup>69</sup>



The four habitat patches identified in Figure 2 are Avon Park (marked as 'A' on the map), Duette Park ('B'), Fisheating Creek ('C'), and Babcock-Webb ('D'). Collectively, they contain 4,387 square miles of potential panther habitat, and so would nearly double the 5,020 square miles of habitat the study identifies south of the river.<sup>70</sup>

This habitat could support about 36 panthers, according to Thatcher et al., but this estimate may ultimately be higher or lower, depending on prey density and other factors.<sup>71</sup> That population would provide an important demographic and geographic

<sup>69</sup> Adapted from Thatcher et al 2009 at 923 (Fig. 4).

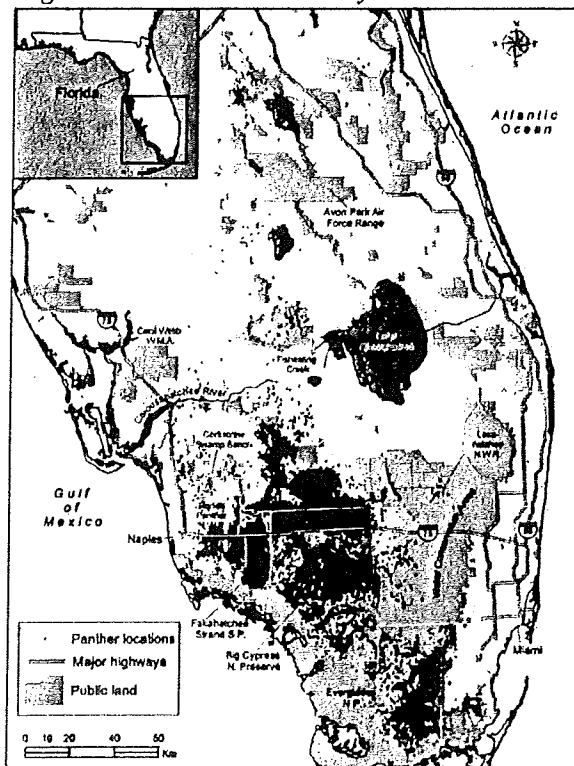
<sup>70</sup> *Id.* at 923.

<sup>71</sup> *Id.*

buffer to panthers south of the river. “[S]uccessful population establishment in [these areas] could help protect the current panther population from extinction caused by stochastic events,” such as those associated with climate change.<sup>72</sup> These lands may also ultimately provide a valuable corridor to connect the south Florida habitat with sites even further north, such as the Okefenokee Swamp, which can support the larger populations which are essential to full recovery.<sup>73</sup>

Importantly, much of this habitat is already being used by panthers. Telemetry data shows male panthers crossing the river into the Babcock-Webb and Fisheating Creek areas and dispersing north well into the Avon Park area, as Figure 3 demonstrates. The Service has recognized that “panthers have been documented north of the Caloosahatchee River over 125 times since 1975,” and that “the panther’s range may spread north of Lake Okeechobee and into the forested areas of western St. Lucie and Martin Counties.”<sup>74</sup> While this use may or may not continue – and a breeding population is unlikely to be established – if the Service does not provide critical habitat protections, it is clear that panthers can and will occupy this valuable habitat if they are allowed to do so.

Figure 4: Panther Telemetry Data 1981-2001<sup>75</sup>



<sup>72</sup> *Id.*

<sup>73</sup> See Cindy Thatcher et al., *Identifying Suitable Sites for Florida Panther Reintroduction*, 70 *Journal of Wildlife Management* 752, 759-63 (identifying the Okefenokee as an important site for panther recovery) (2006) (attached as Ex 33).

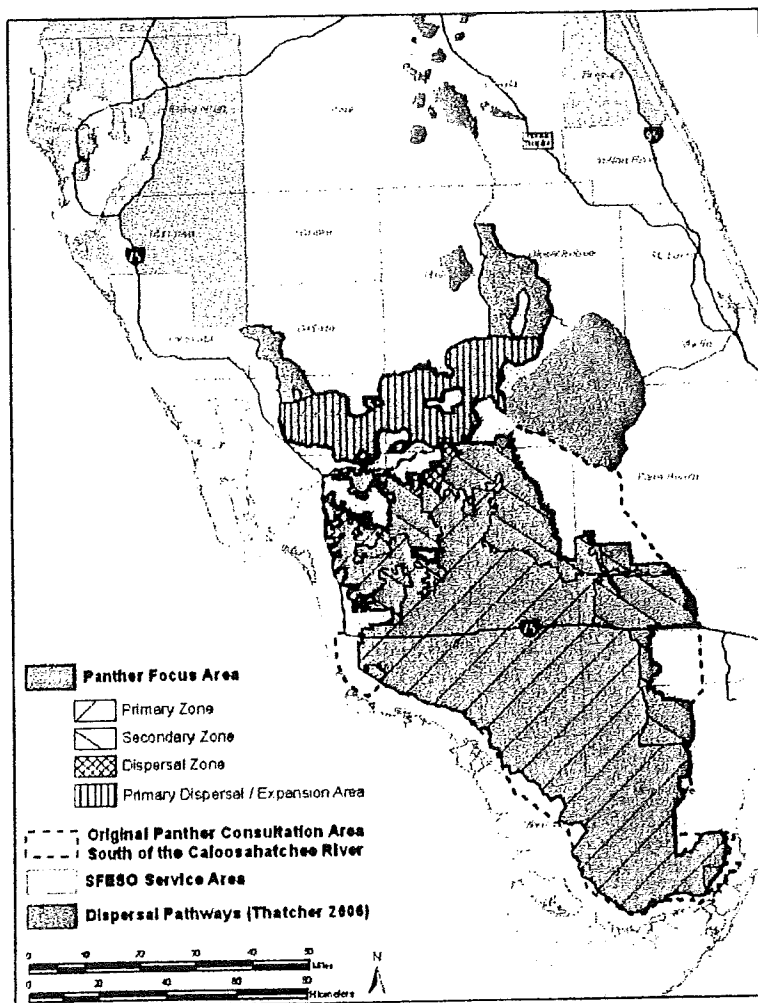
<sup>74</sup> <sup>74</sup> U.S. Fish and Wildlife Service, *Biological Opinion for the Lakeside Ranch Stormwater Treatment Area*, 41420-2006-F-0259 at 5-6 (Jan. 13, 2009) (attached as Ex. 34).

<sup>75</sup> *Id.* at 754 (Fig. 1); see also Thatcher FWS Report at 3 (Fig. 1) (extending this data set to 2005).



In fact, the Service itself has already directly recognized the conservation significance of at least a portion of these specific areas, as Figure 4 demonstrates. Drawing from Thatcher et al.'s work, the Service refined its understanding of habitat north of the river in its "panther focus area," a tool it uses to "assist the U.S. Army Corps of Engineers in determining which projects may have an effect on the Florida panther," and so should trigger consultation with the Service.<sup>76</sup>

Figure 5: FWS-Corps Consultation Map<sup>77</sup>



<sup>76</sup> Letter from Paul Souza, FWS Field Supervisor, to David S. Hobbie, Chief, Regulatory Division, U.S. Army Corps of Engineers (Feb. 19, 2007) (attached as Ex. 35); *see also* Letter from Paul Souza, FWS Field Supervisor, to Margaret E. Gaffney-Smith, Chief, Regulatory Division, U.S. Army Corps of Engineers (Dec. 8, 2006) (attached as Ex. 36). This initial map is, of course, not a critical habitat designation, does not purport to be, and, in any event, does not cover all appropriate habitat north of the river, including sections of the Avon Park and Duette Park ranges. It does, though, demonstrate that the Service understands that panthers are actively using land north of the river.

<sup>77</sup> Figure from 2007 Souza Letter.

This habitat is, like the Primary, Secondary, and Dispersal Zones, “essential to the conservation of the species,” and, if anything, is even more susceptible to destruction without “special management considerations or protection” because it contains less federally-protected land (which is not to say, of course, that Primary, Secondary, and Dispersal Zones now receive adequate protection, either). *See* 16 U.S.C. § 1532(A)(i). Like the habitat south of the river, it is occupied by panthers that rely upon its various “constituent elements” – its woodlands, wetlands, and connecting corridors, as feeding sites, dispersal sites, and, one day, breeding territory. *See* 50 C.F.R. § 424.12(b).<sup>78</sup> Further, with climate change putting continued pressure on the southern habitat regions, this habitat is likely some of the best “protect[ion] from disturbance” that the panther can secure. *See id.* § (b)(5). It must be designated as critical habitat, along with sufficient connecting corridors, as identified by Thatcher et al., to link each of the four habitat patches with each other and with habitat south of the river.

We note that some portions of the habitat north of the river may not presently be used by panthers. The Service still has an obligation to designate these areas of suitable habitat, as they are clearly “essential for the conservation of the species,” *see* 16 U.S.C. § 1532(5)(A)(ii), and, in fact, “a designation limited to [the panther’s] current range would be inadequate to ensure the conservation of the species,” *see* 50 C.F.R. § 424.12(e).<sup>79</sup> Such a limited designation would leave the panther in increasingly dangerous territory, with nowhere to move, and without the additional demographic and genetic stability that a wider range provides. As the Service puts it, “[t]here is insufficient habitat in south Florida to sustain a viable panther population.”<sup>80</sup> The Service must designate additional habitat, even if some portion of is unoccupied. *See, e.g., Fisher v. Salazar*, - F. Supp. 2d -, 2009 WL 3030736, \*8-\*11 (N.D. Fla. 2009) (upholding Service decision to designate unoccupied habitat to “provide habitat needed for storm refuge, expansion. Natural movements, and re-colonization”); *Center for Biological Diversity v. Norton*, 240 F. Supp. 2d 1090, 1108 (D. Ariz. 2003) (holding that the Service’s “exclusion of unoccupied areas is impermissible and inexcusable” where the Service had previously concluded that the habitat was essential to conservation of the species).

#### **IV. The Recovery Plan and Other Agency Actions**

Despite the substantial climate-related threats we have documented, the Florida panther Recovery Plan does not even acknowledge the climate crisis or the impacts of climate change on the Florida panther or its habitat. Although the Plan does, properly, emphasize

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<sup>78</sup> Although this habitat may be somewhat more fragmented and less forested than the southern range, it can still be used by panthers, which have shown their ability to survive on more varied landscapes, given adequate protection. *See, e.g., E. Jane Comiskey et al., Evaluating Impacts to Florida Panther Habitat: How Porous is the Umbrella?*, 3 Southern Naturalist 51, 70-71 (2004) (observing that panthers require some forest cover but use “a much broader spectrum of land covers,” creating “the need to conserve spatial extent of living space”) (attached as Ex. 37).

<sup>79</sup> The statute and regulations do not require that the Service identify primary constituent elements needing special management consideration or protection for unoccupied habitat, but such elements are certainly present here, including the vital feeding, dispersal, and storm refuge sites that these habitats offer.

<sup>80</sup> Recovery Plan at 86.

the importance of expanding the panther's range outside of South Florida,<sup>81</sup> it therefore underestimates the urgency of this task. It also presents no alternatives for addressing climate change, nor any acknowledgment that sea level rise, drought, storms, and changing hydrologic regimes in the Everglades and the Big Cypress areas are likely to significantly alter the Primary, Secondary, and Dispersal Zones.

The Plan must take these factors into account if it is to accurately describe the "site-specific management actions" which are "necessary to achieve" its goals, as the very sites at issue are rapidly changing in ways which imperil the panther population. *See* 16 U.S.C. § 1533(f).

Similarly, the plan's estimates of which criteria must be satisfied for recovery to be achieved, and its estimates of the time and resources required to meet these criteria, need to be revised to reflect the urgency of the climate crisis. *See id.* Without an accurate Recovery Plan, the Service may not recognize opportunities to protect the panther. We therefore petition the Service and the Department to revise the Recovery Plan at the earliest possible time in order to: a) recognize the necessity of designating and or revising critical habitat to ensure recovery of the species; and b) take climate impacts into account in the Recovery Plan.

In addition, hereby petition the Service and the Department to issue no panther-related incidental take permit, *see* 16 U.S.C. § 1539, issue no panther-related habitat conservation plan, *see id.*, issue no panther-related biological opinion, *see* 16 U.S.C. § 1536, and take no other final agency action which could affect the panther or its habitat until the petition is ruled on by FWS, and without taking climate change fully into account. Without a prior ruling on this petition any such actions by FWS would be being taken without fully considering the best scientific data available, which is provided with this petition.

Because critical habitat designation is a critical first step in understanding and mitigating these impacts, we further petition the Service and the Department to take none of the above actions unless and until critical habitat has been designated in accordance with this petition.

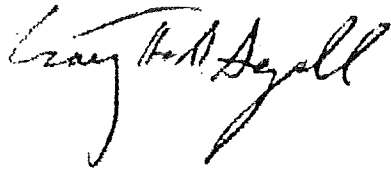
## CONCLUSION

The Florida panther has been pushed out of most of its range; what little habitat remains is threatened by development and, increasingly, by climate change. We therefore request that the Service and the Department of Interior grant this petition and take the actions set forth above.

On behalf of the Sierra Club,

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<sup>81</sup> *See id.*



(for)

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**PART VIII - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: January 9, 2003

**A. BOARD REVIEW:** Staff presented the staff recommendation to adopt the amendment as transmitted to the DCA. One Board member asked several questions concerning the proposal and Burt Harris implications. This Board member stated that Policies 20.1.2, 20.1.3, and 20.1.4 have been identified as having Burt Harris implications. The Assistant County Attorney stated that any regulatory action of the County that changes the currently foreseeable reasonable expectations for development on a parcel creates liability for takings. The Assistant County Attorney further provided that zoning is not the benchmark for the Burt Harris Act. Staff provided a handout that identified 5 existing commercially zoned properties that are located outside of the commercial nodes as identified by proposed Policy 20.1.1.

After further discussing the hand-out, the chairman called for public input. Several members of the public spoke in support of the amendment. One person expressed concern about a piece of commercial property that he owned. Staff responded that the property in question was located within one of the commercial nodes as specified by proposed Policy 20.1.1. The Assistant County Attorney asked to clarify the intent of the first sentence in Policy 20.1.2. The Assistant County Attorney, in part, stated that it was his "understanding that the sense of this first sentence is that commercial stables or tack and feed stores are exempt from commercial site location standards." The Assistant County Attorney proposed modifying this first sentence to read as follows: "Commercial stables or tack and feed stores are exempt from meeting commercial site location standards." The planning consultant for the Bayshore Steering Committee stated that "I think we would have no problem with that if it makes it clearer."

The Board further discussed the existing (non-County owned) commercially zoned properties that are located outside of the commercial nodes as identified by proposed Policy 20.1.1. The Board decided to "exempt" two of the identified parcels. The first parcel is the "Farm Store" parcel, zoned CN-1, located at the intersection of Durrance Road and Bayshore Road. The second parcel, zoned C-1A, located at the intersection of Slater Road and Nalle Grade Road.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

- 1. BOARD ACTION:** The Board voted unanimously to adopt the transmittal language with revisions to Policy 20.1.2. The revised policy reads as follows:

Policy 20.1.2: Commercial stables or tack and feed stores are exempt from meeting commercial site location standards. The existing 7.1 acre +/- retail commercial center at 10440 Bayshore Road, the 0.66 acre +/- retail commercial property at 19451 SR 31, the 0.83 +/- acre retail commercial property at 17270 Durrance Road, and the 0.36 +/- acre retail commercial property described in resolution Z-72-93 which is part of the property at 6600 Nalle Grade Road will be deemed consistent with Policy 20.1.1.

The amendment was approved as part of the Board's Community Plan agenda. The final adoption language is shown in Part VIII, Item D below.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact as advanced by staff.

**C. VOTE:**

<b>JOHN ALBION</b>	<u>AYE</u>
<b>ANDREW COY</b>	<u>AYE</u>
<b>BOB JANES</b>	<u>AYE</u>
<b>RAY JUDAH</b>	<u>AYE</u>
<b>DOUG ST. CERNY</b>	<u>AYE</u>

**D. FINAL ADOPTION LANGUAGE:**

**VISION STATEMENT:**

The Bayshore Community, bounded by I-75, SR 31, the Caloosahatchee River and Charlotte County, is predominantly a rural residential area of single family homes on large acreages, small horse farms, citrus groves, and plant nurseries, interspersed by some larger cattle grazing operations. There are also scattered single family subdivisions and mobile homes on smaller lots which provide for a full range of housing prices. There is limited urban infrastructure and commercial uses. By and large, the residents of Bayshore want to see this land use pattern maintained. The vision of the future would include slow but steady growth with the building of larger single family homes on 2 ½ to 5 acre tracts, as well as some higher density development in the Outlying Suburban category (i.e. up to two units per acre with proper zoning), and continued support for the infrastructure necessary for the owners and breeders of horses. The protection of environmental resources and the maintenance of a wholesome family atmosphere is desired, as well as the protection of existing agricultural and equestrian activities. One community project that could serve these ends would be the development of an equestrian park in the community.

**GOAL 20: BAYSHORE COMMUNITY.** To protect the existing rural residential, agricultural and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities, while excluding incompatible uses that are destructive to the character of this rural residential environment. For the purposes of this goal and related objectives and policies, the boundaries of the Bayshore Community will be I-75 on the west, SR 31 on the east, the Caloosahatchee River on the south and the Charlotte County line on the north.

**OBJECTIVE 20.1: LAND USE.** The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after *{scrivener will insert effective date of policy, if adopted}*, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

**POLICY 20.1.1:** Retail commercial activity will be limited to the Interstate Interchange designation at Bayshore and I-75, plus minor commercial uses at the intersections of Nalle Road and Bayshore, SR 31 and Bayshore, and SR 31 and Old Bayshore. Non-retail commercial uses are permitted elsewhere consistent with the Lee Plan and the Land Development Code.

**POLICY 20.1.2:** Commercial stables or tack and feed stores are exempt from meeting commercial site location standards. The existing 7.1 acre +/- retail commercial center at 10440 Bayshore Road, the 0.66 acre +/- retail commercial property at 19451 SR 31, the 0.83 +/- acre retail commercial property at 17270 Durrance Road, and the 0.36 +/- acre retail commercial property described in resolution Z-72-93 which is part of the property at 6600 Nalle Grade Road will be deemed consistent with Policy 20.1.1.

**POLICY 20.1.3:** No new industrial activities or industrial rezonings are permitted.

**POLICY 20.1.4:** No new mining uses or commercial excavations are permitted.

**OBJECTIVE 20.2: TRANSPORTATION.** All road improvements within the Bayshore Community considered by the County will address the community's goal to maintain its rural character and give preference to alternatives that allow existing roads to function at their current capacity.

**POLICY 20.2.1:** Any expansion of the state arterial roadways should include physically-separated provisions for bicyclists/pedestrians.

**POLICY 20.2.2:** Road capacity improvements needed within the Bayshore Community to serve demands generated outside the community will be designed to minimize the impacts on the community and its rural character.

**POLICY 20.2.3:** If a need to extend Del Prado Boulevard east of I-75 through the Bayshore Community is demonstrated, the corridor evaluation must include alternatives to using the existing Nalle Grade Road alignment. The evaluation will address (but not be limited to) access, safety and community character issues. Alternatives will be presented at evening public workshops within the Bayshore community.

**OBJECTIVE 20.3: SEWER AND WATER.** Given the desire to maintain a low residential density, new central sewage service is not economically feasible and is discouraged north of Bayshore Road within the future non-urban land use categories. Central water service for enhanced fire protection will be encouraged where economically feasible.

**POLICY 20.3.1:** Central sewage service will be encouraged for existing and future high density and intensity developments south of Bayshore Road within the future urban land use categories and for new developments that are required to provide such service under the provisions of Standard 11.2 of the Lee Plan.

**POLICY 20.3.2:** No landowner will be required to connect to central sewer or water utilities or be assessed for same unless a threat to public health can be documented, or if a new development proposes an intensity that exceeds the thresholds in Standards 11.1 and 11.2 of the Lee Plan.

**OBJECTIVE 20.4: PARKS AND RECREATION.** The County will explore, with the support of the residents of Bayshore, the feasibility of establishing an equestrian park as the primary recreation facility for this community.

**POLICY 20.4.1:** The support of the Bayshore residents may include assistance with development and maintenance of such a recreation facility.





BOARD OF COUNTY COMMISSIONERS

Bob Janes  
*District One*

January 8, 2010

A. Brian Bigelow  
*District Two*

Ray Judah  
*District Three*

Tammy Hall  
*District Four*

Frank Mann  
*District Five*

Karen B. Hawes  
*County Manager*

David M. Owen  
*County Attorney*

Diana M. Parker  
*County Hearing Examiner*

Lawrence Massey  
District 1 Growth Management Coordinator  
Florida Department of Transportation  
2295 Victoria Avenue, Suite 292  
Fort Myers, FL 33901  
Re: FDOT Comments - Lee County 10-1 Proposed Comprehensive Plan Amendments

Dear Mr. Massey:

This letter responds to your comments to the Department of Community Affairs on the proposed Lee County Comprehensive Plan amendments. We appreciate your evaluation and review, and we would like to clarify a few of your comments.

In your comment number 6 under **CPA 2008-06 Implementing the DR/GR Study**, you state that Lee County did not contact FDOT concerning this amendment, as required by Florida Statute 337.0261. Your statement that the County relied on the "conclusory opinion of a single consultant without seeking input from the Department on the future regional and state wide needs" is not accurate. You may not have been aware that other FDOT staff were involved in this process.

Lee County has been preparing for this proposed amendment since before the Fall of 2007. As part of the preparation, the County formed a DR/GR stakeholders committee. This committee met more than 20 times between the Fall of 2007 and the Summer of 2008. Part of the committee's mission was that of fact-finding. To that end, we solicited and received a presentation from Deborah L. Snyder, P.E., FDOT District Materials Engineer, expressing the department's concerns and issues regarding aggregate and aggregate production. County staff has also had several communications with John Shoucair, P.E., Geotechnical Materials Engineer, FDOT State Materials Office.

In addition, Ms. Snyder and two other FDOT representatives, Debbie Stewart and Richard Dahlstrom, were included on our interested parties e-mailing list and were given notice of committee meetings and other public hearings on this amendment, and they attended many meetings. We have made every effort to comply with the statutory requirements.

Support documentation submitted with the amendment includes a multi-faceted analysis of the future need for aggregate and identifies sufficient areas for mining to more than cover the 2030 planning horizon of the Lee Plan. The area identified for future mining must be evaluated at every Evaluation and Appraisal Report and if more area is needed to accommodate aggregate demand, appropriate amendments to Map 14 will follow.

If I can be of further assistance in clarifying this matter, do not hesitate to call me at (239) 533-8309.

Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT

 For:

Paul O'Connor, AICP  
Director of Planning

cc: Ray Eubanks, Plan Review Processing Administrator, Florida DCA  
Michael McDonald, Chief Division of Community Planning, Florida DCA  
Brenda Winningham, Regional Planning Administrator, Florida DCA  
Scott Rogers, Principal Planner, Florida DCA  
Deborah L. Snyder, Florida DOT  
John Shoucair, Florida DOT State Materials Office  
David Owen, County Attorney  
Donna Marie Collins, Assistant County Attorney  
Dawn Lehnert, Assistant County Attorney  
Mary Gibbs, Director of Community Development  
David Loveland, Public Works Operations Manager  
Jason King, Project Manager, Dover Kohl & Partners  
Bill Spikowski, Spikowski Planning Associates

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Paul


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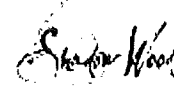
COMMUNITY DEVELOPMENT



**Brooks Concerned Citizens**  
*...dedicated to quality of life issues*



 COPPERLEAF *Island Club Homeowners' Association*



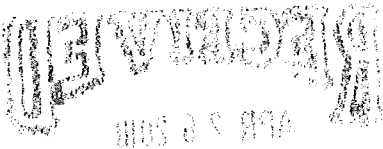
April 21, 2010

Mr. Ray Eubanks  
Plan Process Administrator  
Division of Community Planning  
2555 Shumard Oak Blvd.  
Tallahassee FL 32399

RE: CPA 2008-06 Proposed Lee County Amendments for Southeast Lee County's Density Reduction/Groundwater Resource Area

Dear Mr. Eubanks:

During the past three years, the Conservancy of Southwest Florida, Brooks Concerned Citizens, Copperleaf Community Association, Estero Council of Community Leaders, Island Club Homeowners' Association, Lighthouse Bay, Marsh Landing Homeowners Association, Pelican Sound Golf & River Club, Shadow Wood Home Owners Association, Spring Run, Wildcat Run Community Association and DR/GR resident Kevin Hill have been part of a diverse and dedicated coalition of citizens, businesses and organizations that have come together to find viable solutions for the sustainable future of Southeast Lee



County's Density Reduction/Groundwater Resource Area (DR/GR). A tremendous amount of information was compiled and generated to provide a solid framework for these amendments. As our December 10, 2009 letter to you regarding the DR/GR amendment transmittal package stated, we believe these amendments will create an overlay protecting drinking water resources and allowing agriculture to continue, while directing mining and development to appropriate locations. In that letter, we elaborated upon several areas of concern with the amendments, many of which were addressed by the County. However, there was a last minute addition of mineable lands to Map 14 prior to adoption that we are concerned about and ask that you take into consideration. Therefore, with the exception of this addition to Map 14, our organizations request the Department of Community Affairs (DCA) issue a Notice of Intent to find the DR/GR overlay, as submitted to you in three separate ordinances, in compliance.

### **Removal of Rural Communities from the Residential Overlay Map 17**

The one serious issue that our organizations had regarding these amendments was the inclusion of a Rural Community at Edison Farms within Map 17. Rural Communities were included in the overlay by the County's consultants and were placed along Corkscrew Road and at Edison Farms. While staff initially had concerns about Rural Communities in general and opposed such designation at Edison Farms, at the transmittal hearing staff indicated that they had reevaluated the issue and supported Rural Communities.

The purpose of Rural Communities is to allow owners of large tracts of land to cluster their development onto one portion of their property and to add a commercial component that will, according to staff, reduce traffic on the adjacent roadway network by providing for a portion of the residents' commercial needs on-site. Based on the desire to locate these Rural Communities where large properties exist rather than locating them adjacent to more urbanized areas, the result would be Rural Communities spread out along a two-lane Corkscrew Road. Such development patterns are not much different than the gated golf course communities along Corkscrew Road that constitute the leapfrog development intended to be avoided per Lee Plan Objective 2.1: Development Location, which states:

Contiguous and compact growth patterns will be promoted through the rezoning process to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities.

There can be no doubt that placing Rural Community land use designations on a map clearly delineating their location miles from urbanization and in a leapfrog

pattern into the surrounding agricultural land constitutes urban sprawl and is a land use pattern that the DR/GR study was designed to avoid.

Such concerns were clearly stated in the DCA Objections, Recommendations and Comments (ORC) Report dated January 15, 2010. DCA objected to the Mixed-Use Community at the western end of Corkscrew Road and all of the Rural Communities, based in part upon the determination that these designations, "are not supported by data and analysis demonstrating that the proposed locations and land uses are consistent with maintaining the rural character of the area."<sup>1</sup> DCA also stated that these Rural Communities, "are not environmentally suitable in order to protect natural resources (wetlands, wildlife habitat, wildlife, panther movement, and hydrological resources)."<sup>2</sup> Finally, DCA stated that these Rural Communities, "are not supported by data and analysis demonstrating that the locations of the proposed designations are environmentally suitable for the proposed land use types and densities and intensities of land use that would be allowed."<sup>3</sup>

The DCA Recommendation to address this Objection was two-fold. First, there was the Recommendation to remove the Western Corkscrew Road Mixed-Use Community and all of the Rural Communities, including the Rural Community at Edison Farms. In response, the Lee County Board of County Commission (BoCC) voted to remove all of the Rural Communities from Map 17, an action which our organizations supported. The second component of the ORC Recommendation was to include revisions to the text,

To establish meaningful and predictable guidelines and standards to ensure: (1) the appropriate mix of land uses within the Mixed-Use Community and Rural Community; (2) appropriate density and intensity of land use; (3) appropriate urban form of development occurs as recommended by the supporting data and analysis studies addressing the overlay areas. Support the amendment with data and analysis demonstrating the coordination of the resulting maximum development potential of the land uses with the planning and provision of public facilities (central potable water, central sanitary sewer, adequate water supply, roads, and schools) in order to achieve and maintain the adopted level of service standards for public facilities<sup>4</sup>.

Staff did add language to Policies 3.3.2, 3.3.3 and 3.3.4 to address these concerns. However, since the vote taken by the BoCC removed Rural Communities from Map 17 in their entirety, there was little discussion on the

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<sup>1</sup> Florida Department of Community Affairs, *Objections, Recommendations and Comments Report*, January 15, 2010. p. 3.

<sup>2</sup> Ibid. p. 3.

<sup>3</sup> Ibid. p. 3.

<sup>4</sup> Ibid. p. 3-4.

additional policy language for Rural Communities. Our organizations believe that as there are no Rural Communities designated on Map 17, it may be unnecessary for these corresponding policies to remain and we bring this issue to your attention.

### **Addition to Map 14 Expanding the Footprint of Lands Appropriate for Limerock Mining**

The purpose of the Future Limerock Mining Overlay was to ensure that new mines would be located within the Alico Road corridor, separated from other land uses. Such a separation reduces negative impacts to groundwater recharge, conservation lands and existing residential development. Limiting mining to this area will also result in haul trucks being focused on roadways that are able to handle heavy truck traffic with the least impact to natural resources and wildlife. Our organizations strongly supported the designation of Map 14 (Future Limerock Mining Overlay), and the applicable policies, including those created in Objective 30.1 and Goal 10 of the Future Land Use Element (FLUE).

Through extensive data collection and analysis, it was determined that, according to 2006 data, 3,597 acres of limerock have been mined and another 3,576 acres have been approved for resource extraction. To meet both County and regional needs through the planning horizon year of 2030, an additional 821 acres was determined to be needed for conversion to mining. As the mineable acreage contained within Map 14 provides acreage that not only meets but **significantly exceeds** this need for 821 additional acres, our organizations supported its transmittal and adoption, with the addition of 240 acres within the Galvano property, which was adopted by the BoCC.

### ***Modifications Made at Adoption Hearing***

Unfortunately, a last minute addition to the Future Limerock Mining Overlay was proposed by Florida Rock Industries and unveiled at the adoption hearing. This parcel was the subject of DCA Objection #3. Lee County, at the transmittal hearing, added language to Map 14 which stated, "Areas may be added to Future Limerock Mining Overlay (Map 14) in portions of Sections 28, 31, 32, and 33, T45S, R27E, if the Board of County Commissioners adopts a potential settlement of litigation with Florida Rock Industries, Inc."<sup>5</sup> DCA objected to the inclusion of a self-amending policy such as this and recommended it be deleted.

In response, Lee County did remove this policy, but added the referenced lands to Map 14. Prior to this modification, these lands were included within Page 4 of Map 1 as Priority Restoration areas, with Sections 31 and 32 designated as Tier 1 restoration and Sections 33 and 28 included within Tier 7 restoration. Such a proposed modification of re-designation from restoration to mining is inconsistent with the intent of the DR/GR Overlay.

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<sup>5</sup> Ibid. p. 4.

### ***Inconsistency with Priority Restoration Policies***

According to Policy 30.2.2, Tier 1 and 2 lands contain, "the highest priority for protection from irreversible land-use changes." Yet the County violated the intent of this policy by removing these lands from Tier 1 restoration and placing them into the Future Limerock Mining Overlay. The environmental importance of these lands was established during the 23 meetings of the DR/GR subcommittee and was not once refuted at any of the public hearings on these amendments. These lands were determined to be an important component in the protection of the DR/GR's natural resources and connect publicly-owned lands to the north and south.

Designation of these lands as Tier 1 Restoration was established through data collections and analysis by Kevin L. Erwin Consulting Ecologist, Inc. (KLECE) in their *Ecological Memorandum of The Density Reduction/Groundwater Resource Area (DR/GR)*, which was prepared in 2008 for Dover, Kohl & Partners as part of the County's DR/GR study. According to KLECE:

A combination of wetland management, sustainable agriculture, and phased wetland restoration is possible and necessary within the DR/GR to meet the goals and objectives of Lee County.

Figures 6, 7, 8 and 9 show three priorities of wetland restoration within the DR/GR developed by focusing on three potential phases of restoration within agricultural areas<sup>6</sup>.

Figure 6 clearly depicts Sections 31 and 32 of the Florida Rock land as integral to hydrologic restoration of the public land to the north and south (Attachment 1). As such, it is designated as Priority 1 Restoration. It was based upon the data, analysis and mapping within the KLECE document that this land was forwarded at transmittal as Tier 1 Restoration. In their report, KLECE elaborates upon the need to protect these Tier 1 Restoration lands as part of the overall DR/GR plan when they stated:

The highest priority restoration areas (Priority 1) are typically large intact areas of native lands or farm fields that have strategic importance due [to] their location (Figures 6). These high priority restoration areas provide necessary reconnections of fragmented hydropatterns and native habitat corridors with a secondary but very important benefit to wildlife. The development of accurate watershed and sub-basin boundaries and site specific elevation data will be required to refine priorities and provide additional details for a future restoration planning effort<sup>7</sup>.

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<sup>6</sup> Kevin L. Erwin Consulting Ecologists, Inc. *Ecological Memorandum of the Density Reduction/Groundwater Resource Area (DR/GR)*,. Prepared for Dover, Kohl & Partners, July 2008, p. 12.

<sup>7</sup> Ibid, p. 17.



These lands were based on scientific assessment and determined to be important for future hydrologic connectivity. As no data and analysis has been presented to the contrary, re-designation of these lands resulting in permanent alteration through mining is inappropriate.

In addition to the direct impacts from resource extraction, there will be secondary impacts from allowing mining within this parcel. While the exact details of the mining footprint and any negotiated restrictions are still to be worked out with Lee County, there are some preliminary facts that have been established which reinforce the inclusion of this parcel in Map 14 as inappropriate. As illustrated in Attachment 2 (a document provided by Florida Rock), a large portion of Sections 33 and 28 are within Florida Rock's proposed footprint for mining. Within Sections 31 and 32, approximately half the land will be mined, leaving the other half of the site to be placed into conservation designation.

However, a distinction should be made between the yellow conservation lands, which will not be mined, and the pink conservation easement areas. It should be noted that the lands labeled as Phase 2-A and 2-B conservation easement are actually mine pits that will be reclaimed and planted with a littoral shelf. While this is appropriate for a mine reclamation plan, designating these areas as conservation is misleading.

Regardless, the yellow conservation area is intended connect the public lands to the north and south. Our organizations are concerned that the proposed corridor to connect between the north and south is of a width insufficient to adequately maintain proper connectivity. In addition, we have been informed that while this parcel contains frontage on SR82 within Section 28, due to lack of capacity, haul trucks will not be able to access the road network from this entrance point. Thus, each and every haul truck originating within Sections 28, 32 and 33 will be allowed to cross the conservation lands in order to access Alico Road. This will equate to hundreds of trips daily, for a duration that could be 10-15 years, traversing lands set aside to protect wildlife and water flow. The incompatibility of haul trucks and wildlife has been clearly demonstrated through documentation of road kills on Corkscrew Road and such incompatibility was one of the key factors in directing mining to the land within Map 14. While the haul road through the conservation lands would not accommodate travel at the speeds allowed on Corkscrew Road, the likelihood of road kills is still a major consideration. Mining haul roads are simply not appropriate within conservation lands, nor through lands that, until the adoption hearing, were considered to be Tier 1 restoration.

***No Need Established for Additional Lands to Be Included within Map 14***

While representatives from the mining industry whose clients' lands were not included within the Future Limerock Mining Overlay vociferously opposed Map

14, there was no data brought forward establishing an error in the determination that an additional 821 acres would be insufficient to provide aggregate for the planning horizon of 2030. In fact, as the study determining the aggregate needs of the DR/GR for local and regional supply was conducted during the height of the construction boom, the demand estimates are likely unrealistically high for the actual need over the next several years. According to the Florida Department of Transportation's (FDOT) September 2009 *Strategic Resource Evaluation Study*, "Industry leaders now expect not to reach 2004-5 levels of growth within the next 5 years; in some cases, not within ten....industry is probably correct to expect another 5-6 years of below average growth."<sup>8</sup>

Based on this assessment, the amount of additional aggregate needed to supply local and regional needs is not on a consistent upward trajectory and the estimated supply needs of 2006, during the height of construction, are likely not to be repeated in the near future. This fact provides further reinforcement that 821 additional acres of land for mining between today and 2030 will be sufficient. In addition, the footprint of mineable lands within Map 14, as it exceeds 821 acres, will accommodate aggregate need within this planning horizon. This is an important point to emphasize – the lands available for mining within Map 14 significantly exceed the amount of acreage needed to provide aggregate for the planning horizon. As such, there is no compelling reason to add the Florida Rock parcel or any other lands to this map at this time.

### ***Inconsistency with Florida Statutes***

Compliance with F.S 163.3177(8) requires,

All elements of the comprehensive plan, whether mandatory or optional, shall be based upon data appropriate to the element involved.

However, there is no evidence that these lands, formerly included within the Priority Restoration Areas Page 4 of Map 1 and scientifically supported by the report from KLECE, should now be placed into the Future Limerock Mining Overlay Map 14. The basis for this was not scientific and therefore does not comply with this requirement of Florida Statutes.

Additionally, the inclusion of these lands within Map 14 is inconsistent with F.S. 163.3177(1), which states,

The comprehensive plan shall consist of materials in such descriptive form, written or graphic, as may be appropriate to the prescription of principles, guidelines, and standards for the orderly

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<sup>8</sup> Florida Department of Transportation, *2009 Strategic Resource Evaluation Study: Highway Construction Materials Aggregate Materials Final Report*, 2009, pp.4-5.

and balanced future economic, social, physical, environmental, and fiscal development of the area.

Providing the balance between economic and environmental considerations is a requirement of State Statutes, yet there is nothing that has been submitted demonstrating how hydrologic connectivity and wildlife corridors will be protected through this change from restoration to mining. Such information is necessary in order to make any determination of consistency. Without it, the requirement to provide balance has not been met.

### **Conclusion**

The commitment made by Lee County in initiating, funding and adopting amendments to protect the future of the DR/GR has been tremendous. Our organizations are proud to have been a part of this process and we believe the DR/GR amendments will result in protection of groundwater resources, conservation and restoration of environmentally valuable lands, compatibility of residential development and sufficient sources of aggregate. With the exception of including portions of Sections 28, and Sections 31, 32, and 33, T45S, R27E within Map 14, we believe these amendments are based on data and analysis that demonstrates compliance with all applicable regulations and we ask that you find them in compliance.

If you have any questions, please contact Nicole Ryan, Governmental Relations Manager for the Conservancy of Southwest Florida, at (239) 403-4220.

Sincerely,

Nicole Ryan  
Conservancy of Southwest Florida

Nick Batos  
Brooks Concerned Citizens

Bill Hoewischer  
Copperleaf Community Association

Don Eslick  
Estero Council of Community Leaders

Bill Savage  
Island Club Homeowners' Association

Phil Douglas  
Lighthouse Bay

Connie Mansfield  
Marsh Landing Homeowners Association

John Goodrich  
Pelican Sound Golf & River Club

Peter Rzasnicki  
Shadow Wood Home Owners Association

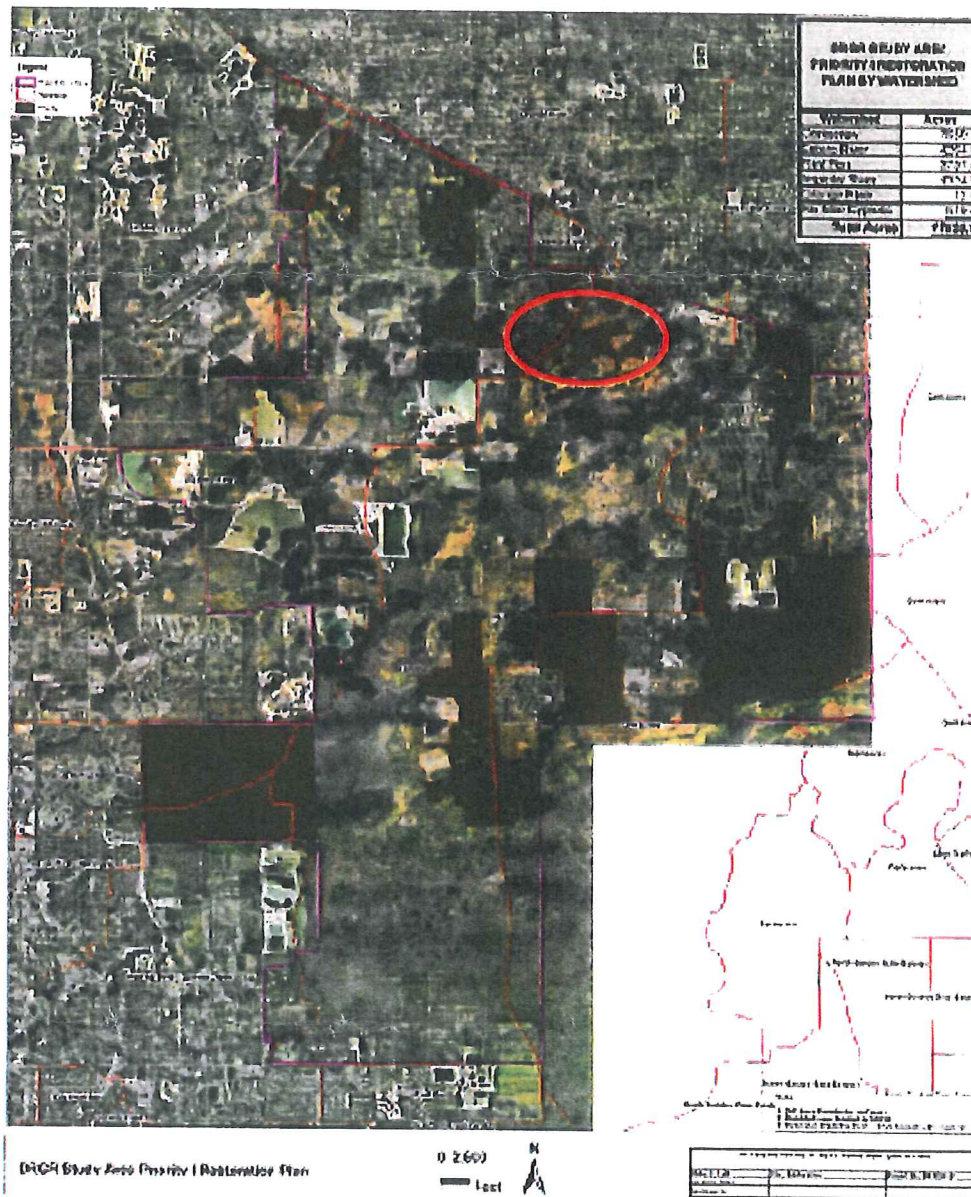
Bob Bonner  
Spring Run

Craig Roberts  
Wildcat Run Community Association

Kevin Hill  
DR/GR Resident

CC: Lee County Board of County Commissioners  
Mary Gibbs, Lee County  
Paul O'Connor, Lee County  
Ron Inge, Land Solutions, Inc.  
Russell Schropp, Henderson, Franklin, Starnes & Holt, P.A.

Attachment 1 – Red circle indicates general location of proposed mine and lands added to Map 14  
 Brown shading indicates lands determined by KLECE to be priorities for wetland restoration







# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

April 28, 2010

Ray Eubanks, Administrator  
Plan Review and DRI Processing  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100

**RECEIVED**  
MAY 03 2010  
COMMUNITY DEVELOPMENT

Dear Mr. Eubanks:

**Subject: Lee County, DCA #10-1  
Comments on Adopted Comprehensive Plan Amendment Package**

The South Florida Water Management District (District) has completed its review of the adopted amendment from Lee County (County). The package consists of 17 adopted amendments to the Lee County Comprehensive Plan. The District's comment focuses on amendment CPA 2008-06, which implements the Density Reduction/Groundwater Resources Study. The District provides the following recommendation for consideration in the Department of Community Affairs sufficiency review of the adopted amendment:

- The County needs to provide detailed analysis of projected water demand, and potential water sources needed to provide water and wastewater services as described in Policy 33.3.3.3. The amendment site is located in an area of limited groundwater availability. The adopted amendment is not supported by quantitative data and analysis and does not demonstrate that the maximum development is supported by public facilities.

We look forward to continuing to collaborate with the County and the Department of Community Affairs in developing sound, sustainable solutions to meet the County's future water needs. For assistance or additional information, please contact Deborah Oblaczynski at (561) 682-2544 or [doblaczy@sfwmd.gov](mailto:doblaczy@sfwmd.gov).

Sincerely,

Rod Braun  
Director  
Intergovernmental Policy and Planning Division

c: Ken Heatherington, AICP, Southwest Florida Regional Planning Council  
Doug Muerer, Lee County Utilities Department  
Paul O'Connor, AICP, Lee County Department of Community Development  
Jim Quinn, Department of Environmental Protection  
Brenda Winningham, Department of Community Affairs



Reply to  
Russell P. Schropp  
Direct Fax Number 239.344.1535  
Direct Dial Number 239.344.1280  
E-Mail: russell.schropp@henlaw.com

April 28, 2010

Mr. Ray Eubanks  
Plan Process Administrator  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100

Re: Lee County Plan Amendment 10-1 (CPA 2008-06, Southeast Lee County  
Density Reduction/Groundwater Resource Area - DRGR)

Dear Mr. Eubanks:

Please consider this letter and the attached exhibits as a response from Florida Rock Industries, Inc. (FRI) to the letter the Department received from the Conservancy of Southwest Florida and associated groups (the Conservancy), dated April 21, 2010.

Representatives of Florida Rock (including myself) met with representatives of the Conservancy group yesterday (April 27) in an effort to discuss issues raised in the letter and correct what we believe to be misinformation and inaccuracies in the facts underlying their concerns. That meeting was unproductive, so the purpose of this letter is to respond to the concerns of the Conservancy letter, correct inaccurate information contained within their letter and to provide the Department with additional information in support of Map 14, the Future Limerock Mining Overlay, transmitted with the amended Lee County Plan amendment CPA 2008-06. Our response is patterned after the topical headings contained within the Conservancy letter. As more fully set forth below, it is FRI's position that:

1. The FRI lands added to Map 14 of the County's plan amendments was not done as a last minute addition but was, in fact, the result of substantial input and discussion that began long before transmittal of the plan amendment, was addressed at the transmittal hearings held by the County, and was generally commonly known by those involved in the plan amendment process, including the Conservancy.
2. The inclusion of the additional FRI lands on Map 14 is the logical result for property that was originally approved for mining by the County in 1993 after being

Henderson, Franklin, Starnes & Holt, P.A.



purchased from the County and others, particularly since the sale of the property was contingent upon being rezoned for mining purposes.

3. Contrary to the Conservancy's assertion, the addition of the Florida Rock lands was not contrary to the County's analysis of future mining needs for the County, after considering other adjustments that were made to Map 14 during the plan amendment process.

4. There is no conflict between Map 14, showing the FRI lands, and Page 4, Map 1 of the Lee Plan Map Series, which indicates priority or "tiered" restoration areas, since the mining plans for FRI will accomplish the intent and purpose of the tier restoration program.

#### **Modifications Made at Adoption Hearing**

The Conservancy letter states that additional FRI property was included on Map 14 as "a last minute addition." This implies that this property did not receive any review by Lee County staff or other public review, and that the property somehow was inserted in some inappropriate manner. Nothing could be further from the truth.

As a matter of background, the previously transmitted Map 14 (attached as Exhibit "A" to this letter) showed a portion of the FRI Mine #2 (referred to hereafter as the "Western Portion") as an area permitted for mining. The Western Portion is highlighted in yellow on Exhibit "A." The Western Portion of the mine continues to be shown on the adopted Map 14 and is not the subject of the Conservancy's objection letter.

The transmittal version of Map 14 also contained a footnote that stated: "Area may be added to Future Mining Overlay (Map 14) in portions of Sections 28, 31, 32, and 33, T45S, R27E, if the Board of County Commissioners adopts a potential settlement of litigation with Florida Rock Industries, Inc." This footnote is also highlighted on the attached Exhibit "A," and referred to the remainder of FRI Mine #2 (referred to hereafter as the "Eastern Portion"). The Department objected to the footnote on the grounds that it created a "self-amending provision" within the Lee Plan. However, the purpose of the added footnote was not to create a self-amending provision that would result in the Eastern Portion being added to Map 14 after adoption of the plan amendment; rather, the purpose of the footnote was to make sure that the Department was aware that the potential resolution of litigation between Lee County and FRI (which has been ongoing since 2005 and is discussed in greater detail below) could result in the addition of the Eastern Portion to the mining lands identified on Map 14. The addition of this footnote to the transmitted Map 14 was thoroughly discussed at the transmittal hearing before the County Commission which was attended by Conservancy representatives. Accordingly, it should not have been a great surprise when the Eastern Portion lands

were discussed again, and added to Map 14, at the adoption hearing, and the Conservancy can hardly claim that the addition of these lands was a "last-minute" decision.

The Eastern Portion of Mine #2 referenced in the footnote and subsequently added to Map 14 at the adoption hearing was purchased in 1993, in part, from Lee County. The purchase of this land was contingent on zoning approval for mining and excavation activity, and closing on the property occurred the day after the Lee County zoning approval. The remainder of the Eastern Portion added to Map 14 was also acquired contingent on zoning approval and was physically separated from the other portions of FRI's mine approval by the parcel of land acquired from Lee County. The closing on this additional property also occurred shortly after the 1993 zoning approval.

Clearly, FRI would be significantly harmed if the Eastern Portion of its property, which was purchased from Lee County (and others) in 1993 for full and adequate consideration and was contingent on Lee County zoning approval, was to be removed from mining use by action of the same body. Accordingly, when a disagreement arose between FRI and the County as to the status of FRI's rights under the 1993 zoning for the Eastern Portion of the mine, litigation was initiated by FRI in 2005 (Florida Rock v. Lee County, Case No. 05-CA-001631, 20<sup>th</sup> Jud. Cir.). However, for the last two years, FRI and the County have been actively and diligently pursuing a reasonable settlement that will recognize the approved status of this property under an updated zoning plan and zoning conditions that are based upon current regulations, rather than those in effect in 1993. These zoning modifications will be subject to a future public hearing. Settlement efforts had progressed at the time of adoption of the plan amendments that Lee County decided it was appropriate to place all of FRI Mine #2 (both the Eastern and Western Portions) on Map 14 and delete the footnote that was contained in the transmittal version of the plan amendment. An enlarged version of the adopted Map 14 is attached as Exhibit "B." The Eastern Portion added at the adoption hearing is highlighted in green on Exhibit "B" and the Western Portion continues to be highlighted in yellow.

Contrary to the Conservancy's assertions, the inclusion of all of FRI Mine #2 on Map 14 was not a last-minute afterthought. In fact, the entire mine has been the subject of numerous ongoing zoning and permitting processes that have kept this mine under public scrutiny for about two decades. The multiple processes and reviews that Mine #2 has undergone prior to its inclusion in Map 14 are discussed below, along with the major environmental commitments that resulted from these reviews.

The FRI mine plan contains significant preserve areas to be placed in conservation easements in favor of Lee County as part of the mining permitting process administered by Lee County. Approximately 1150 acres in the Western Portion of the mine are placed in a conservation easement and serve as connections between Lee County

owned lands north and south of the FRI mine known as the "Wild Turkey Strand Preserve." This connection between the publicly owned preserve areas was discussed with Lee County as part of the establishment of the Southwest Florida International Airport. At that time, these lands were also considered as a possible mitigation bank to offset the impacts to wetlands incurred through the development of the airport. Lee County subsequently elected to purchase other lands for mitigation; however the connection of the Wild Turkey Strand Preserve through the FRI property remained and is incorporated into the FRI mine plan. This vision was the result of an interagency review process with the Florida Department of Environmental Protection, U.S. Army Corps of Engineers, U. S. Fish and Wildlife Service and U.S. Environmental Protection Agency.

The locating of Florida's 10<sup>th</sup> university, now known as Florida Gulf Coast University (FGCU), created a great deal of interest in the DRGR area of Lee County in the 1990s. To facilitate an open and in-depth discussion of a variety of issues in the area, an advisory committee known as the Arnold Committee, named after Florida State Representative J. Keith Arnold, was impaneled to discuss a variety of issues and make recommendations on the future of the DRGR area. The membership of the committee contained numerous agency stakeholders, interest groups and citizens as shown on the attached membership list (Exhibit "C"). According to the Arnold Committee Report and Recommendations, "the primary charge of the Arnold Committee was to develop a set of recommendations for the different management entities that would result in a coordinated program of sustained resource management for Southeast Lee County and Estero Bay."

The location for FGCU is on lands previously leased by FRI for mining purposes. As part of the need for FRI to replace the lands lost to the university and surrounding future university community plans, the current FRI mine as shown on Map 14 was pursued and FRI was encouraged to submit its plans to the Arnold Committee for review and comment. Members of the Arnold Committee would also be involved in their regulatory capacity as permitting agencies for review of the FRI future application submittals. Numerous recommendations concerning the FRI mine plan were made, with the most significant being the establishment of conservation easement areas within the Eastern Portion of the mine. The purpose was to connect Lee County owned lands to the north and south of the FRI property that were to be used for mitigation of the impacts that resulted from construction of the Southwest Florida International Airport. The county owned property two sections wide, from east to west, on the northern border of the FRI property and also on the south border of the FRI property. The proposed conservation easement would connect these two parcels. The original zoning of the property allowed for extensive mining in this area. The mining plan provided for some preservation bordering the north property line and additional preservation bordering the south property line. However, the only connection between the two on-site preserve areas was the existing FPL powerline easement. This provided for a very narrow

connection between these FRI preserve lands. The discussions with the Arnold Committee and its regulatory agency members resulted in a recommendation to add a supplemental connection approximately 300' wide. The mining plan now proposed by FRI will substantially increase this land corridor to 1,600' at its narrowest point. The overall acreage within the FRI connection to the Lee County mitigation lands for the airport has increased from 365 acres to 1,283 acres as a result of FRI's efforts with the various study groups and agencies. Exhibits "D" and "E" attached to this letter show this connection under both the original and proposed mining plans for Mine #2.

Subsequent to the Arnold Committee, the U. S. Army Corps of Engineers (Corps) formed a group of diverse interests to support the Corps in drafting an Environmental Impact Statement (EIS) for an area in Lee and Collier Counties that included the DRGR area of Lee County. This group was known as the Alternatives Development Group (ADG) and included a diverse membership as shown on the attached membership list (Exhibit "F"). It is significant to note that David Guggenheim, former director of the Conservancy of Southwest Florida, was a member of the ADG and was very active in the meetings and process of establishing the committee's report to the Corps.

Through their work, the ADG divided the study area into four sub-areas, labeled Zooms A through D and created a number of alternatives for these four Zooms. In all, twenty-eight different alternatives were created, nine for Zoom B, which includes the area of the FRI mine. FRI's mine is included in whole or in part in eight of the nine alternatives created for this portion of the study area. These alternatives formed the basis for the "Environmental Impact Statement on Improving the Regulatory Process in Southwest Florida, Lee and Collier Counties, Florida" Although FRI was not a member of the ADG, the FRI mine was presented by the representatives of the federal, state and local agency members that were familiar with the FRI mine, the Arnold Committee work and the previous zoning approvals for the property.

During 2008, Lee County proposed and held public hearings on amendments to Chapter 12 of the Lee County Land Development Code. This portion of the code regulates mining operations within Lee County. Throughout the process, FRI presented its mine plan and worked with Lee County to establish a permitting and regulatory framework for existing mines, such as the FRI mine shown on Map 14. Numerous public hearings were held by the Lee County Board of County Commissioners and its advisory boards on the amendments to the regulations. The presence and status of the FRI mine was well known throughout this process and substantial public vetting of issues as they related to the FRI mine was undertaken. Representative of some of the groups who joined in the Conservancy letter participated in these hearings and likely heard the numerous presentations made by FRI.

During 2009 and 2010, Lee County held extensive hearings and workshops concerning the subject plan amendments for the DRGR area of the county. As with the Land

Development Code amendments, FRI was present through the majority of these hearings and workshops and presented its mine plan and how that plan was addressed by the proposed Lee Plan amendments. The ultimate result of these presentations and discussions was that the Eastern Portion of FRI Mine #2 was included on the adopted Map 14 that is under review by the Department. Representatives of the Conservancy and related groups were present during these hearings and knew, or should have known, of the mine plan for the FRI property that was openly discussed as an addition to Map 14.

In summary, the FRI mine plan has received extensive public vetting and discussion since the zoning of the property in 1993. Any assertion that the FRI mine plan, or any portion thereof, was "a last minute addition" or "unveiled at the adoption hearing" is contrary to seventeen (17) years of public review. Parties to the Conservancy letter were present and involved in many of these public reviews.

#### **Inconsistency with Priority Restoration Policies**

The Conservancy letter raises concerns over the removal of the FRI property from the Tier 1 Restoration level established in Map 1, Page 4 of the Lee Plan map series. Portions of the FRI lands, specifically Sections 31 and 32, T45S, R27E, were previously shown within the Tier 1 acquisition area. These are the two sections of land discussed above under the Arnold Committee review and are lands contained within the adopted Map 14 of the Lee Plan.

One of the base documents for the DRGR amendments to the Lee Plan is the report by Kevin L. Erwin Consulting Ecologist, Inc. entitled *Ecological Memorandum of The Density Reduction/Groundwater Resource Area (DR/GR)*. As noted in this report, on page 17:

The highest priority restoration areas (Priority 1) are typically large intact areas of native lands or farm fields that have strategic importance due [to] their location. These high priority restoration areas provide necessary reconnections of fragmented hydropatterns and native habitat corridors with a secondary but very important benefit to wildlife.

These two sections of land are currently being utilized for row crops and cattle ranching. Further, there is a large FP&L power line easement that traverses the property. As a result of the historic agriculture activity and the power line, the historic flows within the FRI property and the connection between the Lee County mitigation lands to the north and south of the FRI property have been substantially altered.

The proposed amendments to the Lee Plan addressing the Tier acquisition areas state:

POLICY 30.2.2: The DR/GR Priority Restoration overlay depicts land where protection and/or restoration would be most critical to restore historic surface and groundwater levels and **to connect existing corridors or conservation areas** (see Policy 1.7.8 and Map 1, Page 4). This overlay identifies seven tiers of land potentially eligible for protection and restoration, with Tier 1 and Tier 2 being the highest priority for protection from irreversible land-use changes. Lee County will evaluate this overlay map every 7 years to determine if changes in public ownership, land use, new scientific data, and/or demands on water resources justify updating this map. **This overlay does not restrict the use of the land in and of itself. It will be utilized for informational purposes since this map will represent a composite of potential public acquisition activities in the county.** (emphasis added)

POLICY 30.2.3: It is in southwest Florida's interest for public and nonprofit agencies to actively **pursue acquisition of partial or full interest** in land within the Tier 1 areas in this overlay through direct purchase; partnerships with other government agencies; long-term purchase agreements; right of first refusal contracts; land swaps' **and other appropriate means. These lands would provide critical connections to other conservation lands** that serve as the backbone for water resource management and wildlife movement within the DR/GR. (emphasis added)

Through the work of FRI with the Arnold Committee, FDEP, Corps and other agencies, and with the issuance of the Environmental Resource Permit (ERP), Permit No. 0134874-001 on November 9, 2000, from the Florida Department of Environmental Protection (DEP), the objectives of these policies have been met **if the mining plan can be implemented.** The ERP requires extensive water quality and quantity monitoring, restoration of natural flows and significant enhancement, restoration and creation of wetland habitat and enhancement and restoration of upland habitat. Notably, the ERP includes an expansion of the land connection between the Lee County public lands north and south of the FRI property from an area the width of the powerline easement of approximately 300', as approved in the Lee County zoning of the property, to a minimum width of 1,600'. The original conservation area proposed by FRI totaled approximately 365 acres. Through the work of the Arnold Committee, regulatory agencies and cooperation by FRI, the conservation easement area has expanded to 803 acres that has been granted to the State post permit issuance, plus an additional 480 acres that will be placed in conservation easement post mining. The total conservation easement area is approximately 1,283 acres, which is essentially equivalent to the two sections of acreage envisioned by the prior Tier 1 notation previously noted on the property. It should be noted that the conditions of the ERP specifically allow for a termination of the conservation easement and the planned restoration/creation/enhancement work if FRI is unable to engage in the mining work permitted by the ERP. This would occur if FRI is unable to pursue its mining operation as shown on Map 14.

As noted in proposed Lee Plan Policy 30.2.2, above, the goal of the Tier strategy is to provide for connectivity of existing corridors and does not restrict the use of the land in and of itself. Proposed Lee Plan Policy 30.2.3 provides for the acquisition of partial interests in the Tier 1 lands through a variety of means. A conservation easement grant fulfills the acquisition of a partial interest.

The FRI lands in Sections 31 and 32, T45S, R27E were removed from the Tier 1 notation due to their addition to Map 14. Accordingly, there is no internal inconsistency between these two maps. However, the inclusion of these lands on Map 14 does not eliminate the opportunity to achieve the objectives outlined in the proposed Lee Plan Policy 30.2.2 and Policy 30.2.3. Just the opposite is true with respect to the FRI lands. With the provisions of the ERP and the updated plans and conditions that will result from the litigation settlement discussed above, the following environmental uplifts will occur within the FRI lands:

- Removal of berms restricting water flows between the County owned lands adjacent to the FRI property
- Removal of ditches and swales utilized in the farming operation on the FRI property in order to restore natural flows
- Selective grading of the FRI property to promote and restore natural flows
- Removal of exotic vegetation within preserved wetland and upland areas
- Enhancement of existing vegetation within preserved wetland and upland areas
- Creation of selective wetland habitat within the current farming areas
- Installation of a ditch block on Alico Road to restore normal flows to the Estero River
- Expansion of the land connection between the county owned lands from a width of approximately 300' to a minimum width of 1,600' to be utilized for wildlife usage
- Water quality monitoring program within the preserve areas
- Water level and quantity monitoring program within the preserve areas
- Creation of enhanced littoral shelves and habitat within the conservation areas providing for fish capture and wading bird forage area
- Stormwater management
- Conveyance of a conservation easement in favor of FDEP for 803 acres, subsequently to be also conveyed to Lee County, an increase from the original 365 acres proposed
- Conveyance of additional 480 acre conservation easement over post mining lakes and littoral shelves in favor of FDEP and Lee County

The key factor in the discussion over the FRI lands to be placed into conservation is that they are done so at no cost to the citizens of Lee County. Clearly, the ability to conduct FRI's mining plan enables it to consider the conveyance of conservation interests in the

properties. The mine plan was designed with the input of a variety of stakeholders and regulatory agencies and has evolved from that originally envisioned by FRI in 1993. However, absent the ability to mine, there is no incentive for FRI to convey the conservation easements and Lee County will be required to rely on public funding for the acquisition of any connection between the County-owned mitigation properties. As noted above, the existing conservation easement in favor of FDEP is eligible for termination if the ability of FRI to pursue its mine plan is not achieved.

It is the position of FRI that its mine plan and the provisions of its ERP and discussions with Lee County will produce a result that achieves the intent of the Tier 1 acquisition plan more quickly than could otherwise be achieved. In addition, there is no cost to the citizens of Lee County for this environmental benefit.

The Conservancy raises a concern over the width of the corridor connecting the Lee County lands. As noted previously, the total corridor to be placed in conservation easement has increased from 365 acres to over 1,280 acres. The land corridor within the 1,280+ acres has increased in width from approximately 300' to a minimum width of 1,600', a 500% increase in width. Through discussions with Lee County, the littoral shelves within the conservation easement area have been substantially redesigned to provide for more plantings, fish capture areas and bird forage areas. The lake area created from the mining is to be placed in a conservation easement upon completion of mining and is part of the total environmental system of uplands, wetlands, littoral shelves and lake area. To state that any one part is not part of an overall plan of ecosystem design and "is misleading" does not recognize the environmental restoration and uplift that the FRI plan accomplishes.

The Conservancy has raised a question over the magnitude of the truck traffic that will traverse a proposed haul road provided for in the ERP on the grounds that conflicts with wildlife will occur. As noted earlier in this letter, FRI has proposed mining areas on both the east and west sides of the proposed conservation lands. These lands were acquired from Lee County and third parties contingent on Lee County zoning approval for mining. In order to access these lands for mining purposes, the ERP provides for a temporary haul road over the conservation land area so that FRI can truck the material from the easternmost portion of the mine to its processing plant west of the conservation land area. This haul road is not lighted, will not be paved and the ERP provides for culverts underneath the roadway to restore/maintain water flow and for animal crossings. After completion of mining, the temporary haul road will be removed and reclaimed, and made part of the conservation lands system.

The Conservancy letter appears to incorrectly assume that the traffic utilizing the haul road will be the same as the truck traffic that travels on the public roadways. Our meeting with the Conservancy representatives on April 27 confirmed this misunderstanding. The trucks that utilize this temporary haul road will be larger haul



trucks that have a capacity significantly larger than the licensed trucks that travel the public roads. The haul trucks have a very low maximum speed and are not permitted on public roads. Their function is to haul material from the eastern portion of the mine to the processing plant facilities in the western portion of the mine. It is at these western processing facilities where the excavated material is processed for sale and loaded into the dump trucks that are seen on the public highways. By confusing the dump trucks seen on the public highways with the haul trucks used internally as part of moving material for processing, the Conservancy letter incorrectly assumes that there will be hundreds of fast moving truck trips daily that will utilize this temporary haul road. This will not be the case with the internal haul trucks in terms of speed or quantity.

#### **No Need Established for Additional Lands to Be Included within Map 14**

The Conservancy letter asserts that there are no facts to support the addition of the Eastern Portion FRI lands within Map 14. The deletions made by Lee County from the original proposed Map 14 are contrary to this assertion.

The basis for the original Map 14 was the Dover, Kohl and Partners report submitted to Lee County in May 2009, entitled *Proposed Lee Plan Amendments for Southeast Lee County*. Table A, contained on page 19 of the report lists twelve operations that were considered in formulating Map 14 and also correlates with the acreage needed for the anticipated mining needs between now and 2030.

During the hearings for the DRGR amendments, staff recommended and the BOCC concurred with the deletion of Areas A, D and E as shown on Table A of the Dover, Kohl and Partners report. These three areas total 971 acres deleted from the original proposed Map 14 areas. The additional mining acreage added to Map 14 for the remainder of the FRI mine totals approximately 892 acres, which is less than that deleted by Lee County during the DRGR plan amendment process.

In addition, Table A contained 1,454 mining acres for Area B, which is contained within the Tradeport area of the Lee Plan Future Land Use Category. There were numerous objections to this large area being removed from the Tradeport category and placed into a mining designation. Accordingly, Lee County reduced this area to 241 acres within Map 14. As a result of this reduction, an additional 1,214 acres of possible mining within Lee County was removed from Map 14.

These two reductions in acreage are significantly more than the acreage added by Lee County for the Eastern Portion of the FRI lands and do not over-allocate the lands available for future mining.

Mr. Ray Eubanks  
April 28, 2010  
Page 11

### Inconsistency with Florida Statutes

The Conservancy letter also expresses concerns with the provisions of Map 14 being in conflict with the Priority Restoration Areas contained on Page 4 of Map 1 of the Lee Plan map series and being inconsistent with F.S. 163.3177(8).

As noted above, the FRI property appears on the adopted Map 14 and not on the adopted Page 4 of Map 1; therefore, there is no internal inconsistency within the proposed Lee Plan amendments. Also as noted above, the FRI plan achieves the objectives of the Tier 1 overlay due to the FRI plan's sensitivity to connectivity, restoration and enhancement, and the granting of conservation easements.

The Conservancy letter also raises the concern that inclusion of the FRI lands within Map 14 is inconsistent with F.S. 163.3177(1) by not providing a balance between economic and environmental considerations. As noted above, the provisions of the ERP issued by DEP in 2000 plus the ability for Lee County to obtain conservation easements over significant portions of the FRI property at no public cost are significant balances between the economic and environmental factors affecting the FRI proposal.

In conclusion, the addition of the Eastern Portion of the FRI lands to Map 14 is intended to fully recognize a previously permitted mining operation that has been vetted in various public forums for 17 years. The mining plan proposed by FRI seeks a balance between the economic and environmental considerations of the DRGR land use category, in general, and the FRI property, in particular. The mining plan accomplishes environmental restoration and uplift and provides for connectivity to not one, but two, significant Lee County owned preserve areas. The acreage added to Map 14 by the Eastern Portion of the FRI lands is well within the mining acreage deleted by the County from the preliminary drafts of Map 14. The FRI mining acreage assists in providing for a meaningful availability of construction aggregate material to meet Lee County's and the region's needs through the year 2030.

As a result, we encourage the Department to find Map 14, as adopted by Lee County, to be in compliance with Florida Statutes.

Sincerely,



Russell P. Schropp

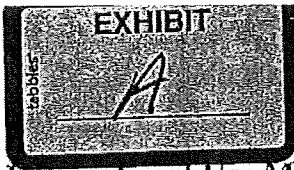
RPS/rs

Mr. Ray Eubanks  
April 28, 2010  
Page 12

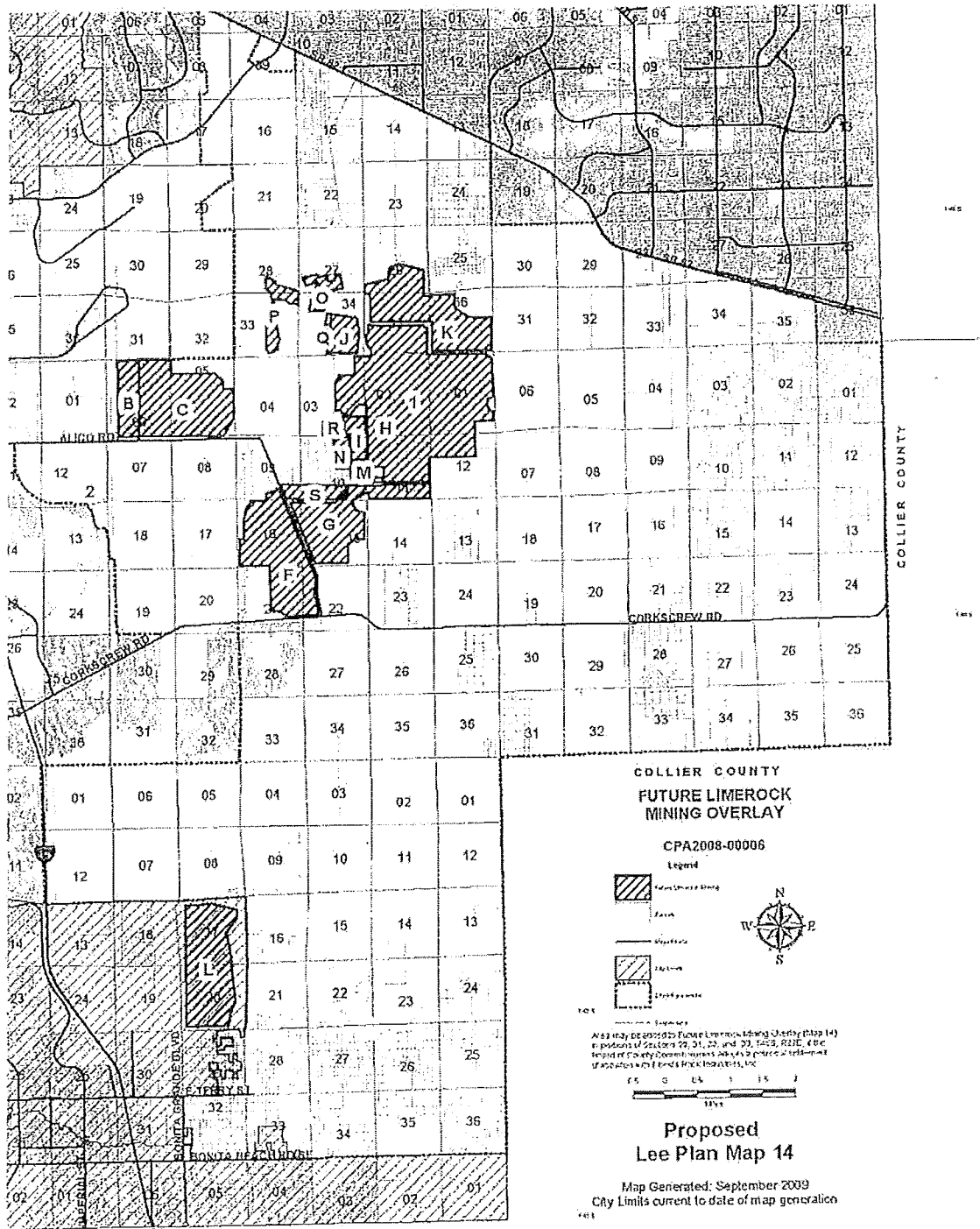
cc: Lee County Board of County Commissioners  
Mary Gibbs, AICP  
Paul O'Connor, AICP  
Donna Marie Collins, Assistant County Attorney  
Nicole Ryan, Conservancy

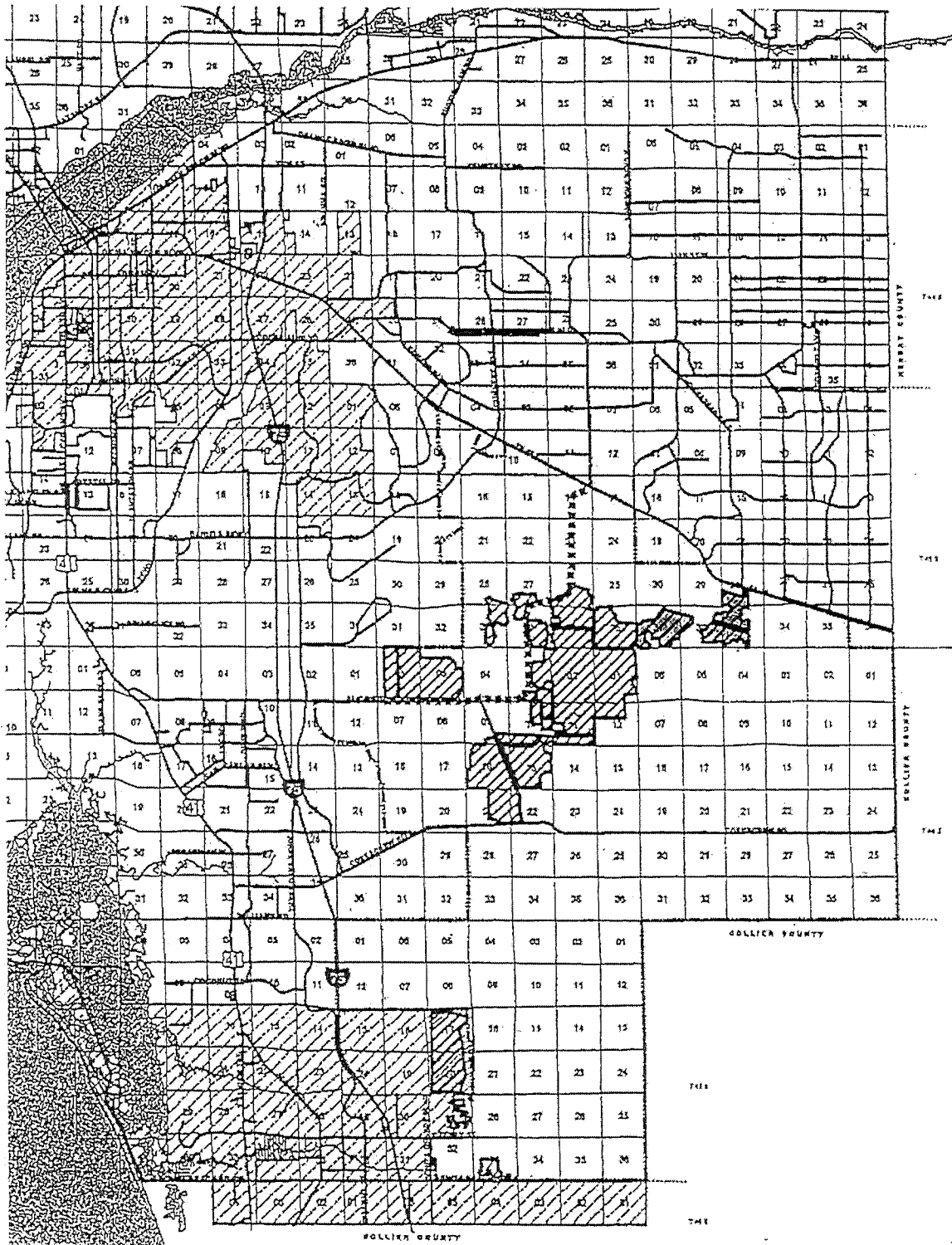
Attachments

- A: Map 14 as transmitted
- B: Map 14 as adopted (enlarged)
- C: Arnold Committee membership
- D: Original Mine Conservation Areas
- E: Current Mine Conservation Areas
- F: ADG membership









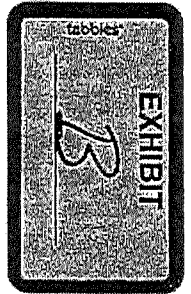
(m) Amend Map 14 of the Future Land Use Map Series to designate a "Future Limerock Mining" overlay



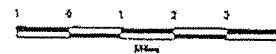
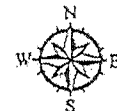


### Legend

-  Southeast Lee County
-  Future Limerock Mining
-  County Line
-  City Limits
-  Major Roads
-  Alico Road Extension



LEE COUNTY  
SOUTHWEST FLORIDA  
DIVISION OF PLANNING




Map Generated: March 2010  
City Limits current to date of map generation.

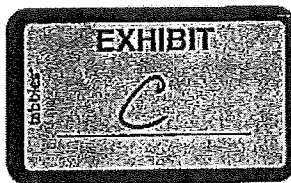
Lee Plan Map 14

**AS AMENDED**

By Board of County Commissioners  
March 3, 2010

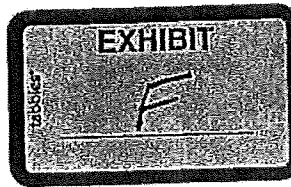
Western Portion

 Eastern Portion



### Arnold Committee Membership




Representative Keith Arnold, Chairman  
Commissioner Douglas St. Cerny, Lee County  
Secretary Jim Murley, Florida Department of Community Affairs  
Bill Hammond, South Florida Water Management District  
Carl Snipes, Southwest Florida Regional Planning Council  
Dr. Roy McTarnaghan, Florida Gulf Coast University  
Colonel Terry Rice, U.S. Army Corps of Engineers  
Jon Hankinson U.S. Environmental Protection Agency  
Eugene Boyd, Responsible Growth Management Coalition (former member)  
Gary Beardsley, RGMC (current member)  
Bill Spikowski, Jr  
Michael Cicccone  
Bill Keyes  
Eva Freeman  
Jim Humphrey  
Betty Simpson  
Craig Johnson, U.S. Fish and Wildlife Service  
Mary Lee Mann  
Alan Hoffaker  
Ben Hill Griffin, III  
Peter Doragh  
Rick Barber  
Audrea Anderson  
Tom Reese

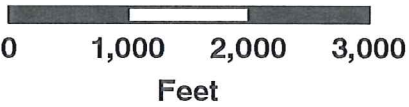
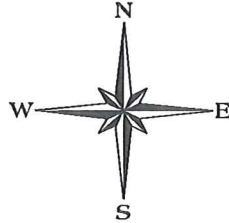


**LIST OF MEMBERS  
ALTERNATIVES DEVELOPMENT GROUP**

NAME	AFFILIATION
Baker, Bob	Council of Civic Associations
Barber, Rick	Lee and Collier County Commissions
Beck, Tom	Department of Community Affairs
Cassani, John	Lee County Hyacinth Control District
Daltry, Wayne	SW FL Regional Planning Council
Davenport, Claudia	Big Cypress Basin Board
Douglas, David	David Douglas Assoc., N Ft. Myers Chamber of Commerce
Dryden, Kim	U.S. Fish and Wildlife Service
Durham, Tim	Wilson, Miller, Barton & Peek, Inc.
Folks, John	Department of Agriculture and Consumer Services
Graham-Elliott, Clara Anne	League of Women Voters of Lee County
Griffith, Ed.	WCI Communities
Guggenheim, David	The Conservancy of Southwest Florida
Hall, John R.	U.S. Army Corps of Engineers
Hammond, Bill	South Florida Water Management District
Hartman, Bradley J.	Florida Game and Fresh Water Fish Commission
Highsmith, Peggie	Department of Environmental Protection
Inge, Ronald	Lee County Horizon Council, Harper Bros., Inc.
Kain, Wallace	City of Sanibel
Kegg, Earl	Collier County
Klaas, Richard	Florida Real Estate Consultants
Kranzer, Bonnie	Governor's Commission for Sustainable South Florida
Lucas, Al	U.S. Environmental Protection Agency
Merriam, Chip	South Florida Water Management District
Montgomery, Neale	Pavese, Garner, Haverfield, Dalton, Harrison & Jensen
Mulhere, Bob	Collier County Planning
O'Connor, Paul	Lee County: Planning Division
Roth, Robert H.	Barron Collier Partnership/Silver Strand Division
Stallings, Fran	General Public - Several Environmental Organizations
Strain, Mark P.	Gulf Bay Communities, Inc.
Thoenke, Kris	National Wildlife Federation
Uhle, Matthew D.	Economic Dev. Coalition of Lee Co.
Ward, Whit	Collier Building Industry Association, Inc.

**LEGEND**

-  FORT MYERS MINE No. 2
-  EASTERN CONSERVATION LANDS
-  LAKE



**PROJECT LOCATION**

NOTES:

AERIAL PHOTOGRAPHS WERE ACQUIRED THROUGH THE LEE COUNTY PROPERTY APPRAISER'S OFFICE WITH A FLIGHT DATE OF AUGUST - NOVEMBER 2007.

COUNTY INFORMATION AND ROADWAY NETWORKS WERE ACQUIRED FROM THE FLORIDA GEOGRAPHIC DATA LIBRARY WEBSITE.

E:\199719\FRI074\GIS\2009\COUNTY MEETING\EXHIBITS\EXHIBIT 4 AERIAL WITH FDEP PERMITTED CONSERVATION LANDS 17MIL.Z.MXD - 4/28/2010 @ 11:03:27 AM

REVISIONS	DATE	DRAWN BY	DATE
		P.F.	4/17/09
		DESIGNED BY	DATE
		D.T.	4/17/09
		REVIEWED BY	DATE
		K.C.P.	4/17/09

13620 Metropolis Avenue  
Suite 200  
Fort Myers, Florida 33912  
Phone (239) 274-0067  
Fax (239) 274-0069






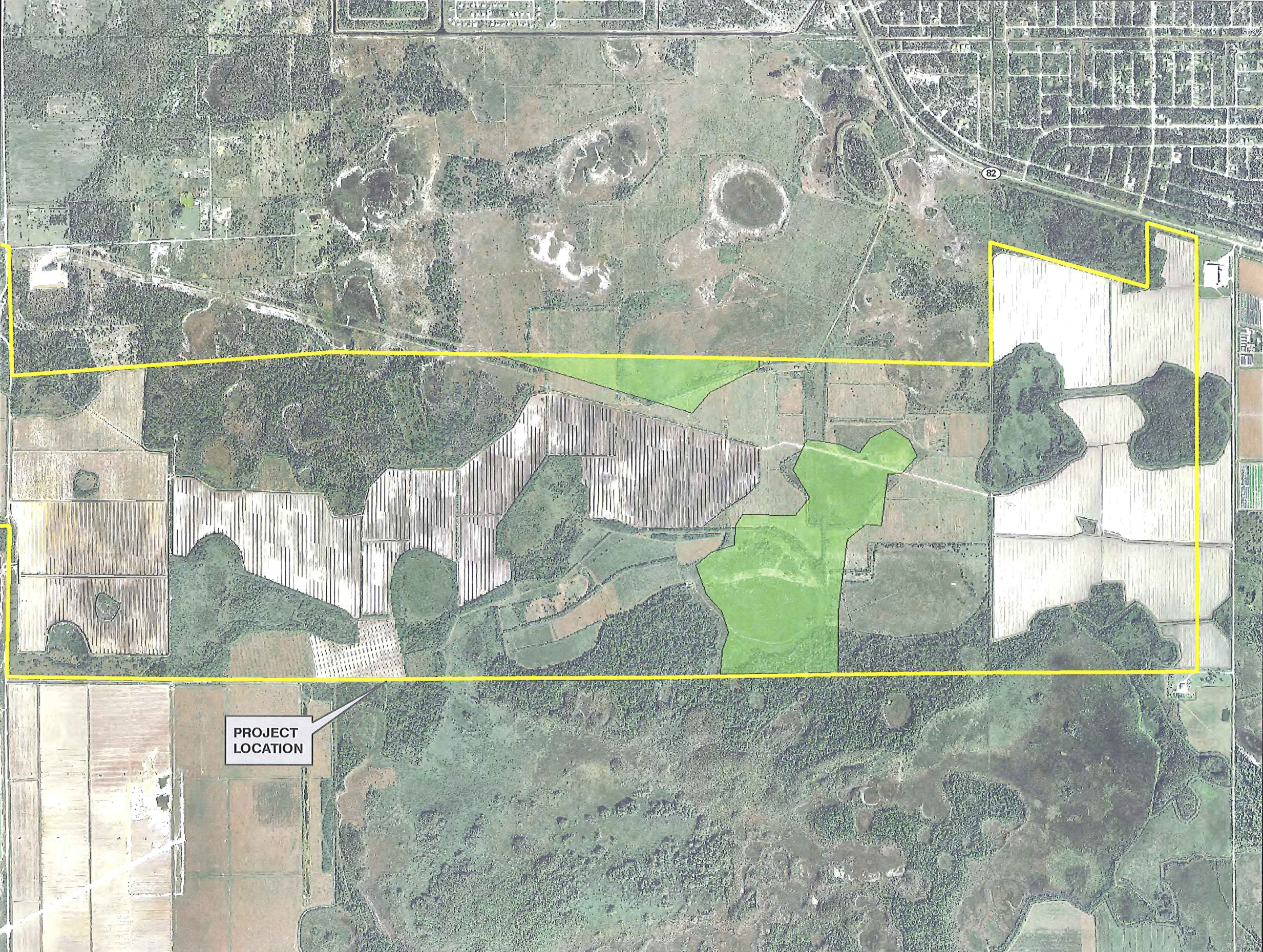
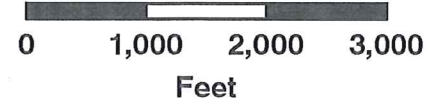
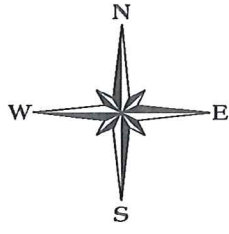
**FLORIDA ROCK INDUSTRIES, INC.**  
**FORT MYERS MINE NO.2**  
AERIAL WITH FDEP PERMITTED CONSERVATION LANDS

DRAWING No.	97FRI074
SHEET No.	4



**LEGEND**

-  FORT MYERS MINE NO. 2
-  LEE COUNTY ZONING RESOLUTION
-  2-Z-93-055 PRESERVES



NOTES:

AERIAL PHOTOGRAPHS WERE ACQUIRED THROUGH THE LEE COUNTY PROPERTY APPRAISER'S OFFICE WITH A FLIGHT DATE OF AUGUST - NOVEMBER 2007.

COUNTY INFORMATION AND ROADWAY NETWORKS WERE ACQUIRED FROM THE FLORIDA GEOGRAPHIC DATA LIBRARY WEBSITE.

E:\1997\197\FRI074\GIS\2009\COUNTY MEET NO EXHIBITS\ SHEET 3 AERIAL WITH LEE COUNTY ZONING RESOLUTION 17X11.Z.MXD - 4/28/2010 @ 11:02:01 AM

REVISIONS	DATE	DRAWN BY	DATE
		P.F.	4/17/09
		DESIGNED BY	DATE
		D.T.	4/17/09
		REVIEWED BY	DATE
		K.C.P.	4/17/09

13620 Metropolis Avenue  
Suite 200  
Fort Myers, Florida 33912  
Phone (239) 274-0067  
Fax (239) 274-0069



**FLORIDA ROCK INDUSTRIES, INC.**  
**FORT MYERS MINE NO.2**  
AERIAL WITH LEE COUNTY ZONING RESOLUTION  
PRESERVE

DRAWING No.	97FRI074
SHEET No.	3

April 30, 2010

BOARD OF COUNTY COMMISSIONERS

Bob Janes  
District One

A. Brian Bigelow  
District Two

Ray Judah  
District Three

Tammy Hall  
District Four

Frank Mann  
District Five

Karen B. Hawes  
County Manager

David M. Owen  
County Attorney

Diana M. Parker  
County Hearing  
Examiner

Mr. Ray Eubanks  
Plan Processing Administrator  
Florida Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, Florida 32399-2100

Re: Lee County Amendment 10-1  
CPA 2008-06, Implement the DR/GR Study  
Land Added to Map 14

Dear Mr. Eubanks:

You received a letter from the Conservancy of Southwest Florida, dated April 21, 2010, that asserts, among other things, that there is no demonstrated need to support the addition of the eastern portion of the Florida Rock Industries, Inc (FRI) lands to Map 14.

These lands were rezoned to allow mining activities in the early 1990's, but the approvals have since expired. The eastern portions of the FRI lands are the subject of an ongoing lawsuit between the property owner and the County concerning the expiration. The parties are in the process of negotiating a settlement of the suit. As part of that settlement, Lee County has agreed to include the property in the Mining overlay on Map 14. This was alluded to in the transmittal documents by the note regarding this property that was initially included on Map 14.

The basis for the originally proposed Map 14 was contained in the county consultant (Dover, Kohl and Partners) report submitted to Lee County in May 2009, entitled *Proposed Lee Plan Amendments for Southeast Lee County*. Table A, contained on page 19 of the report and Map 14 both included twelve tracts of land that were recommended for inclusion on the original Map 14.

During the public hearing process staff recommended and the Board of County Commissioners agreed to delete areas A, D, and E from both the table and proposed map 14. Deleting these three areas effectively removed 971 acres from the original consultant's proposed Map 14 areas. In addition, Table A contained 1,454 mining acres for Area B, which is contained within the Tradeport area of the Lee Plan Future Land Use Category. There were numerous objections to this large area being removed from the Tradeport category and placed into a mining designation. Accordingly, Lee County ultimately reduced this area to some 241 acres within Map 14. As a result of this reduction, an additional 1,214 acres of recommended Future Limerock Mining was removed from Map 14. Together, a total of 2,185 acres was removed from the original consultant's recommendation. Staff did propose additional land for the overlay, but the additional acreage did not come close to replacing all that was removed.

The additional mining acreage added to Map 14 by the inclusion of the eastern portion of the FRI mine totals approximately 892 acres. This is significantly less than the area deleted by the County during the DRGR plan amendment process. As such, Lee County does not believe the inclusion of the eastern portion of the FRI land over-allocates the lands needed for future mining.

Sincerely:

A handwritten signature in black ink that reads "Paul O'Connor". The signature is written in a cursive style with a large initial "P" and a heart-shaped flourish above the "O".

Paul O'Connor, AICP, Director  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
Division of Planning

*cc: Mike McDaniel, Chief of the Office of Comprehensive Planning, DCA  
Brenda Winningham, Regional Planning Administrator, DCA  
Mary Gibbs AICP, Director, Department of Community Development  
Donna Marie Collins, Assistant County Attorney  
Russell Schropp, Esq. Henderson, Franklin, Starnes & Holt, P.A.*



**BOARD OF COUNTY COMMISSIONERS**

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Karen B. Hawes  
*County Manager*

David M. Owen  
*County Attorney*

Diana M. Parker  
*County Hearing Examiner*

May 5, 2010

Ray Eubanks, Plan Review and Processing Administrator  
Florida Department of Community Affairs  
Bureau of State Planning  
Plan Processing Section  
2555 Shumard Oak Boulevard  
Tallahassee, FL. 32399-2100

Re: Additional Information Concerning CPA2008-06  
Adoption Submission Package  
2008/2009 Comprehensive Plan Amendment Cycle

Dear Mr. Eubanks:

Please find attached to this letter a memorandum from Lee County Utilities staff which provides data and analysis concerning potable water and sanitary sewer demand generated by the Mixed Use Communities. The letter also provides an analysis of the ability of the County to provide the required services. This analysis demonstrates that the County has the existing capacity to provide potable water and sanitary sewer services to the Mixed Use Communities.

By copy of this letter and its attachments, I certify that this letter and attachments have been sent to: the Southwest Florida Regional Planning Council; the Florida Department of Transportation (FDOT); the Florida Department of Environmental Protection; Florida Department of State; the Florida Fish and Wildlife Conservation Commission; the Department of Agriculture and Consumer Services; Florida Department of Education; Florida Office of Tourism, Trade, and Economic Development; and, the South Florida Water Management District.

Sincerely,  
**DEPT. OF COMMUNITY DEVELOPMENT**  
**Division of Planning**

Paul O'Connor, AICP, Director  
Director



INTEROFFICE MEMORANDUM  
FROM  
PUBLIC WORKS  
UTILITIES

Date: May 5, 2010

TO: Matt Noble  
Lee County Planning Department

From: Howard S. Wegis *HSW*  
Staff Engineer

**SUBJECT: Proposed Mixed Use Communities in DRGR  
Analysis of LCU's Ability to Serve**

The Lee County Planning Department has requested LCU to provide input regarding LCU's ability to provide water and wastewater service to Rural and Mixed Use Communities being proposed as part of the transfer of development rights (TDR) program for the DRGR Comprehensive Plan Amendment.

LCU was provided a map titled "Rural Communities & Mixed-Use Communities without TDR's" depicting the location of the eleven communities proposed for increased density as a result of the TDR program (see Attachment 1). Each of the eleven sites are labeled A through K on this map. LCU was also provided a table titled "Maximum Development Capacity for DR/GR Communities (see Attachment 2). The table provides the maximum retail square footage, maximum office square footage, and number of dwelling units for each community. These square footages and number of dwelling units were utilized to develop the gallons per day demand for potable water and determine the amount of wastewater that would be generated for each community to determine the potential impact of each community on the water and wastewater systems that would be serving these communities.

For the purpose of this analysis, the following assumptions were made with respect to which utility and/or facility would provide water and wastewater service to these communities.

- Sites A and D would be provided water service by LCU's Corkscrew Water Treatment Plant (WTP) and wastewater service would be provided by LCU's Three Oaks Wastewater Treatment Plant (WWTP).
- Site B would be provided water service by LCU's Pinewoods WTP and wastewater service would be provided by LCU's Three Oaks WWTP
- Site C would be provided both wastewater and water service by Bonita Springs Utilities.
- Sites E, F, and G would be provided water service by LCU's Corkscrew WTP and wastewater service would be provided by an on-site wastewater treatment system.
- Site H would be provided water service by LCU's Corkscrew WTP and wastewater service would be provided by LCU's Gateway WWTP.

- Sites I, J, and K would be provided water service by LCU's Green Meadows WTP and wastewater service by LCU's Gateway WWTP.

Regarding the means with which the projected potable water demands and wastewater flows were calculated utilizing FAC Chapter 64E-6, the following assumptions were made: Flows for office space flow were assumed to be 15 gallons per day per 100 square foot of area and flows for retail was assumed to be 0.1 gallon per day per square foot. For Dwelling Units the adopted level of service for Lee County, 250 gallons per day per dwelling unit was utilized as a projected flow.

Utilizing the assumptions discussed above a projected water demand and wastewater flow was determined for each community. These flows were then assigned to the various LCU facilities discussed above. A spreadsheet showing the results of the analysis is shown in Attachment 3 titled, "DRGR TDR Projected Flows".

Given the assumptions described above and the analysis shown on Attachment 3, the following summarizes the potential impact to LCU's treatment facilities.

#### Corkscrew Water Treatment Plant

- An increase in demand for potable water from the Corkscrew WTP of 527,348 gallons per day on annual average (0.527 MGD) is projected as a result of the proposed amendment.
- The Corkscrew WTP is currently producing and annual average of 8.2 MGD with a permitted treatment capacity of 15.0 MGD.
- The committed capacity to developments that are proposed to be served by the facility total 1.85 MGD.
- Increases in demand at the Corkscrew WTP are being met with a combination of permitted fresh and brackish groundwater.

#### Three Oaks Wastewater Treatment Plant

- An increase in wastewater flow to the Three Oaks WWTP of 314,660 gallons per day on annual average (0.315 MGD) as a result of the proposed amendment.
- The Three Oaks WWTP current annual average flow is 2.3 MGD and the permitted treatment capacity of the facility is 6.0 MGD.
- The committed capacity to developments that are proposed to be served by the facility total 2.5 MGD.
- The demand for reclaimed water in the Three Oaks WWTP regional reuse service area far exceeds the supply. Therefore, the additional reclaimed water generated as a result of this amendment will be utilized to meet the high demand for reclaimed water in this area.

#### Gateway Wastewater Treatment Plant

- An increase in wastewater flow to the Gateway WWTP of 891,881 gallons per day on annual average (0.892 MGD) as a result of the proposed amendment.
- The Gateway WWTP current annual average flow is 0.62 MGD and the facility is currently permitted at 1.0 MGD.
- The committed capacity to developments that are proposed to be served by the facility total 0.078 MGD.
- The facility is currently being expanded to a capacity of 3.0 MGD. Construction of

the expansion to 3.0 MGD is 95% complete.

- The demand for reclaimed water in the Gateway community far exceeds the supply. Therefore, the additional reclaimed water generated as a result of this amendment will be utilized to meet the high demand for reclaimed water in this area.

#### Pinewoods Water Treatment Plant

- An increase in demand for potable water from the Pinewoods WTP of 148,262 gallons per day on annual average (0.148 MGD) as a result of the proposed amendment.
- The committed capacity to developments that are proposed to be served by the facility total 0.964 MGD.
- The Pinewoods WTP current annual average flow is 3.99 MGD and the facility is currently permitted at 5.3 MGD.
- Increases in demand at the Pinewoods WTP are being met with brackish groundwater from the Lower Hawthorn Aquifer.

#### Green Meadows Water Treatment Plant

- An increase in demand for potable water from the Green Meadows WTP of 621,928 gallons per day on annual average (0.622 MGD) as a result of the proposed amendment.
- The committed capacity to developments that are proposed to be served by the facility total 1.849 MGD.
- The Green Meadows WTP current annual average flow is 5.62 MGD and the facility is currently permitted at 9.0 MGD.
- A design of an expansion of the Green Meadows WTP to a capacity of 10.0 MGD is currently underway. The proposed source of the increased capacity is brackish groundwater from the Lower Hawthorn Aquifer.

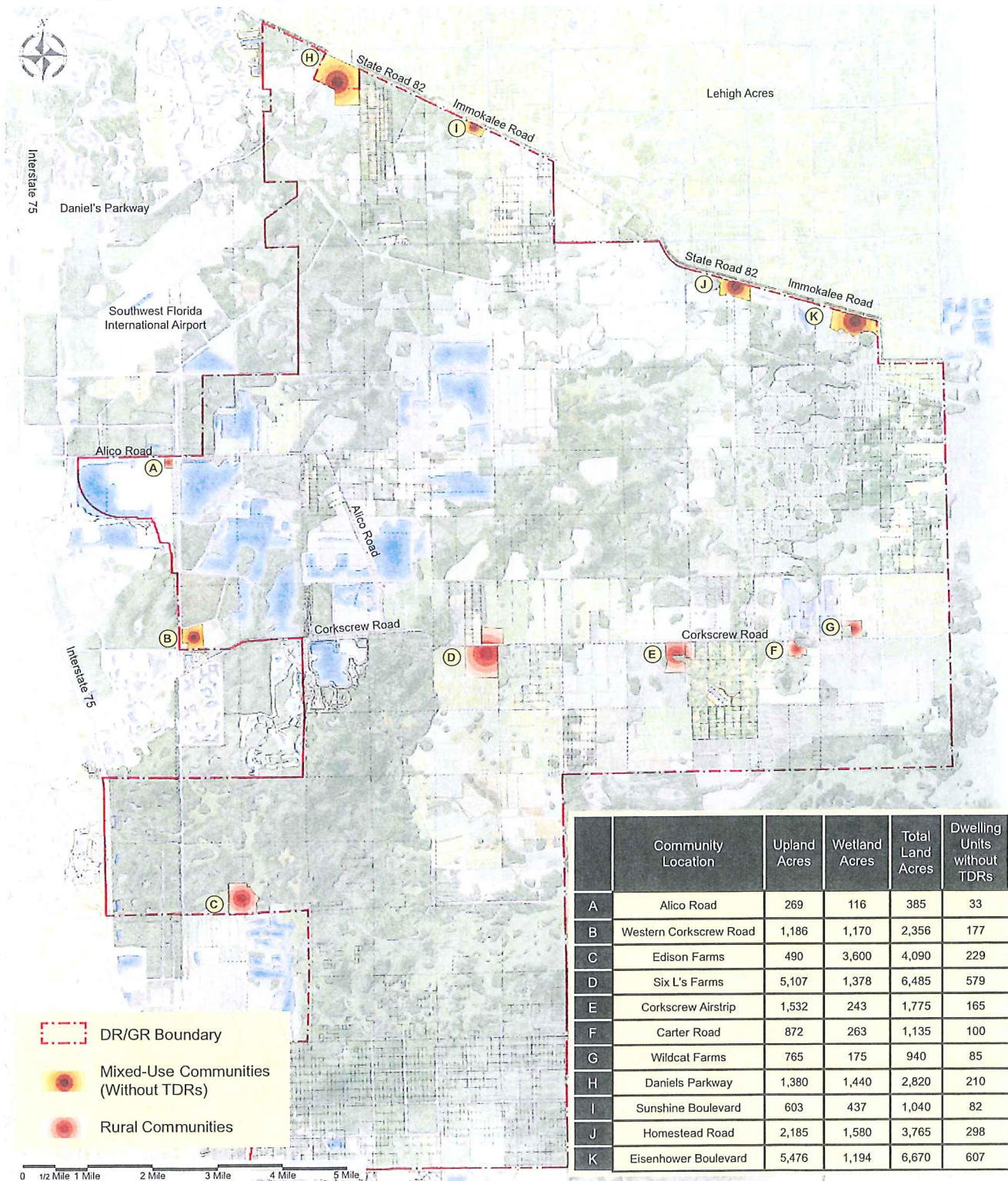
It should be noted that LCU's water transmission and distribution system is configured in such a way that potable water produced at the various points of entry (treatment facilities) can travel through interconnections between the various systems. To a limited extent, these interconnections allows for flexibility with respect to managing deficits and surpluses that may arise at one particular treatment facility.

# ATTACHMENT 1

## TRANSFERABLE DEVELOPMENT RIGHTS IN SOUTHEAST LEE COUNTY

### RURAL COMMUNITIES & MIXED-USE COMMUNITIES WITHOUT TDRs

One strategy involves clustering the development rights of the largest, single-owner, tracts on major roads\*.



\* See Chapter 4 for tract outlines.



## ATTACHMENT 2

### Maximum Development Capacity for DR/GR Communities

		Retail SF	Office SF	# of DUs	
A	Alico Road	0	0	33	<i>rural</i>
B	West Corkscrew	73,047	73,047	520	<i>mixed-use</i>
C	Edison Farms	22,156	22,156	243	<i>rural</i>
D	Six L's Farms	56,591	56,591	576	<i>rural</i>
E	Corkscrew Airstrip	1,184	0	165	<i>rural</i>
F	Carter Road	9,672	9,672	100	<i>rural</i>
G	Wildcat Farms	3,842	3,842	85	<i>rural</i>
H	Daniels Parkway	163,812	163,812	916	<i>mixed-use</i>
I	Sunshine Blvd	42,028	42,028	449	<i>mixed-use</i>
J	Homestead Rd	108,107	108,107	660	<i>mixed-use</i>
K	Eisenhower Blvd	43,575	43,575	1,185	<i>mixed-use</i>
<b>TOTAL</b>		<b>524,014</b>	<b>522,830</b>	<b>4,932</b>	

**ATTACHMENT 3  
DRGR TDR MIXED COMMUNITY PROJECTED FLOWS**

Site	Site Name	Retail SF	Office SF	# of DU's	Flow (gpd)		Flow (gpd) # of DU's	Total Flow (gpd)	Proposed Utility Water Service	Proposed Utility Sewer Service
					Retail SF	Office SF				
A	Alico Road	0	0	33	0	0	8,250	8,250	LCU Corkscrew	LCU Three Oaks
B	West Corkscrew	73,047	73,047	520	7,305	10,957	130,000	148,262	LCU Pinewoods	LCU Three Oaks
C	Edison Farms	22,156	22,156	243	2,216	3,323	60,750	66,289	BSU	BSU
D	Six L's Farms	56,591	56,591	576	5,659	8,489	144,000	158,148	LCU Corkscrew	LCU Three Oaks
E	Corkscrew Airstrip	1,184	0	165	118	0	41,250	41,368	LCU Corkscrew	On-Site
F	Carter Road	9,672	9,672	100	967	1,451	25,000	27,418	LCU Corkscrew	On-Site
G	Wildcat Farms	3,842	3,842	85	384	576	21,250	22,211	LCU Corkscrew	On-Site
H	Daniels Parkway	163,812	163,812	916	16,381	24,572	229,000	269,953	LCU Corkscrew	LCU Gateway
I	Sunshine Blvd	42,028	42,028	449	4,203	6,304	112,250	122,757	LCU Green Meadows	LCU Gateway
J	Homestead Road	108,107	108,107	660	10,811	16,216	165,000	192,027	LCU Green Meadows	LCU Gateway
K	Eisenhower Blvd	43,575	43,575	1,185	4,358	6,536	296,250	307,144	LCU Green Meadows	LCU Gateway

Notes: 1.Flow Calculations: 15 gpd per 100 sq.ft of office space  
Per FAC 64E-6 0.1gpd per sq. ft. of retail space

2.DU flows based on Lee County LOS = 250 gpd/du

Facility	Flow (gpd) (AADF)
LCU Corkscrew WTP TTL	527,348
LCU Three Oaks WWTP TTL	314,660
LCU Gateway WWTP TTL	891,881
LCU Pinewoods WTP TTL	148,262
LCU Green Meadows WTP TTL	621,928



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST  
Governor

THOMAS G. PELHAM  
Secretary

May 11, 2010

RECEIVED  
MAY 13 2010

The Honorable Tammara Hall, Chairwoman  
Lee County Board of County Commissioners  
Post Office Box 398  
Fort Myers, Florida 33902-0398

COMMUNITY DEVELOPMENT

Dear Chairman Judah:

The Department has completed its review of the Comprehensive Plan Amendments for Lee County, as adopted on March 3, 2010, (DCA No. 10-1), and has determined that the plan amendments adopted by Ordinance Numbers 10-03 through 10-18 meet the requirements of Chapter 163, Part II, Florida Statutes (F.S.), for compliance, and that the plan amendments adopted by Ordinance Numbers 10-19, 10-20, and 10-21 do not meet these requirements. The Department is issuing a Notice of Intent to find the Comprehensive Plan Amendments adopted by Ordinance Numbers 10-19, 10-20, and 10-21 "Not In Compliance" and the Comprehensive Plan Amendments adopted by Ordinance Numbers 10-03 through 10-18 "In Compliance," as previously noted. The Notice of Intent has been sent to the *Fort Myers News Press* for publication on May 12, 2010. The Department is also issuing the attached Statement of Intent regarding the Amendments adopted by Ordinance Numbers 10-19, 10-20, and 10-21 found not in compliance.

Please note that a copy of the adopted Lee County Comprehensive Plan Amendments, the Statement of Intent, and the Notice of Intent must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Lee County Planning Division, 1500 Monroe Street, 2nd Floor, Ft. Myers, Florida 33901. Please be advised that Section 163.3184(8)(c)2, F.S., requires a local government that has an internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the Department's Notice of Intent.

In addition, the Statement of Intent and Notice of Intent will be forwarded along with a petition to the Division of Administrative Hearings for the scheduling of an administrative hearing pursuant to Section 120.57, F.S. We are interested in meeting with you and your staff at your convenience for the purpose of developing an acceptable solution to this not in compliance finding. The issues raised in the attached Statement of Intent pertain to Amendment CPA2008-06 for the Density Reduction/Groundwater Resource area.

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100  
850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: [www.dca.state.fl.us](http://www.dca.state.fl.us)

♦ COMMUNITY PLANNING 850-488-2350 (p) 850-488-3300 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦  
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS  
NOTICE OF INTENT TO FIND LEE COUNTY  
COMPREHENSIVE PLAN AMENDMENT CPA2008-06 ADOPTED  
BY ORDINANCE NOS. 10-19, 10-20 AND 10-21 NOT IN COMPLIANCE  
AND THE COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY  
ORDINANCE NOS. 10-03 THROUGH 10-18 IN COMPLIANCE  
DOCKET NO. 10-1-NOI-3601-(A)-(N)

The Department gives notice of its intent to find Amendment CPA2008-06 to the Comprehensive Plan for Lee County, adopted by Ordinance Nos. 10-19, 10-20 and 10-21 on March 3, 2010, NOT IN COMPLIANCE, and Amendments adopted by Ordinance Nos. 10-03 through 10-18, on March 3, 2010, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

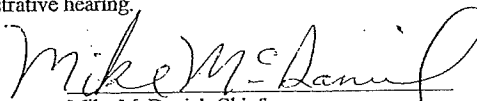
The adopted Lee County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendment Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Lee County Planning Division, 1500 Monroe Street, 2<sup>nd</sup> Floor, Fort Myers, Florida 33901.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendments to the Lee County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, a copy must be mailed or delivered to the local government and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for the amendment found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachcok Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

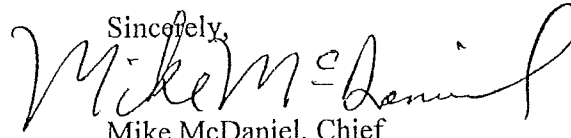
After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.



Mike McDaniel, Chief  
Office of Comprehensive Planning  
Department of Community Affairs  
Division of Community Planning  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

The Honorable Tammara Hall, Chairwoman  
May 11, 2010  
Page 2

If you have any questions, please contact Brenda Winningham, Regional Planning Administrator, at (850) 922-1800, or Lynette Norr, Assistant General Counsel, at (850) 488-0410.

Sincerely,  
  
Mike McDaniel, Chief  
Office of Comprehensive Planning

MM/sr

Enclosures: Notice of Intent  
Statement of Intent

cc: Mr. Ken Heatherington, Executive Director, Southwest Florida RPC  
Mr. Paul O'Conner, Director, Lee County Division of Planning

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: LEE COUNTY COMPREHENSIVE  
PLAN AMENDMENTS 10-1 (CPA2008-06);  
AMENDING THE VISION STATEMENT;  
FUTURE LAND USE ELEMENT;  
GROUNDWATER RECHARGE SUB-  
ELEMENT OF THE COMMUNITY  
FACILITIES AND SERVICES ELEMENT;  
CONSERVATION AND COASTAL  
MANAGEMENT ELEMENT; GLOSSARY;  
FUTURE LAND USE MAP SERIES; LEE  
PLAN TABLES 1(A) AND 1(B)

Docket No. 10-1-NOI-3601

STATEMENT OF INTENT TO FIND A PORTION OF  
COMPREHENSIVE PLAN AMENDMENTS  
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes, and Rule 9J-11.012(6), Florida Administrative Code (F.A.C.), hereby issues this Statement of Intent to find those portions of Comprehensive Plan Amendment 10-1 (“Amendments”) adopted by Lee County in Ordinance Nos. 10-19, 10-20, and 10-21 on March 3, 2010, Not In Compliance. The Department finds that the above cited portion of the Amendments are not “in compliance,” as that term is defined in Section 163.3184(1)(b), Florida Statutes (F.S.), for the following reasons:

- I. AMENDMENT CPA2008-06 (Ordinance Nos. 10-19, 10-20, and 10-21)
  - A. Inconsistent provisions. The inconsistent provisions of the Amendments under this subject heading are as follows:

The amendments (Amendment CPA2008-06) adopted by Lee County amend the Vision Statement; Future Land Use Element; Groundwater Recharge Sub-element of the Community

Facilities and Services Element; Conservation and Coastal Management Element; Glossary; Future Land Use Map Series; and Lee Plan Table 1(a) and Table 1(b). The amendments pertain to an area referred to in the Lee County Comprehensive Plan as the Density Reduction/Groundwater Resource (DR/GR) area located in the southeastern portion of Lee County.

The amendments establish a Transfer of Development Rights (TDR) program to transfer development rights from sending lands in the DR/GR area. Although amendment Policy 33.3.4 states that the maximum number of DR/GR TDR credits that may be established may not exceed 9,000 credits, Policy 33.3.4 does not establish meaningful and predictable guidelines and standards to apply and implement the TDR program on individual properties (individual sending areas) addressing: (1) a TDR transfer credit generation rate to guide the generation of TDR credits from the TDR sending area; and (2) the numerical value of the TDR multipliers that may apply to the TDR sending area and receiving area.

Amendment Policies 33.3.3 and 33.3.4 do not establish meaningful and predictable guidelines and standards for a TDR transfer rate defining: (1) the relationship between a TDR credit and dwelling units of the receiving areas (within and outside of the DR/GR area); (2) the relationship between a TDR credit and Fractional Ownership/Timeshare Units and Bed and Breakfast Establishments of the receiving areas within the DR/GR area; and (3) the relationship between a TDR credit and nonresidential development of receiving areas outside of the DR/GR area. Because the transfer rate from a TDR credit to a dwelling unit (and also to “Fractional Ownership/Time-share Units and Bed and Breakfast Establishments”) has not been established by the plan policies, the maximum number of dwelling units (and also “Fractional Ownership/Time-share Units and Bed and Breakfast Establishments”) that may result from the

TDR program (transfers can be made inside and outside the DR/GR area) cannot be determined and has not been demonstrated to be based on a need. Within the DR/GR area, the total number of potential dwelling units is limited by the maximum density standards (5 dwelling units per acre) for the Mixed-Use Communities where the TDR credits can be utilized. But, the transfers to areas outside the DR/GR area could produce an undetermined number of dwelling units because the transfer rate (the number of TDR credits per dwelling unit) has not been established. The amendment is not supported by data and analysis, based upon TDR transfer rates (the rate at which a TDR credit creates a dwelling unit) established in the plan policies, identifying the potential number of dwelling units resulting from the TDR program and demonstrating a need for the dwelling units.

Amendment Policies 33.3.3 and 33.3.4(3) contemplate the transfer of development rights to areas outside of the DR/GR area. Policy 33.3.3 allows the transfer of development rights “to appropriate Future Urban Areas, such as the Mixed Use Overlay and the Lehigh Acres Specialized Mixed-Use Nodes.” Policy 33.3.4(3) states that “The preferred receiving locations for the transfer of TDRs are within appropriate Future Urban Areas such as the Mixed Use Overlay and the Lehigh Acres Specialized Mixed Use Nodes.” However, the language “appropriate Future Urban Areas” does not clearly define the location of TDR receiving areas outside of the DR/GR area. Therefore, Policies 33.3.3 and 33.3.4(3) do not establish meaningful and predictable guidelines and standards defining the location of the TDR receiving areas outside of the DR/GR area.

For Mixed-Use Communities within the DR/GR area, Amendment Policy 33.3.2 states the following for density and intensity standards: (1) residential density is limited to the existing allowable density based on the upland and wetland acreage; (1)(a) when expanded with



transferred development rights, the maximum gross density is 5 dwelling units per acre of total land designated as a Mixed-Use Community on Map 17; and (1)(b) and (1)(c) the maximum intensity of non-residential development is 75 square feet, per by right clustered dwelling unit; and the maximum intensity of non-residential development is 800 square feet per TDR credit. However, Policy 33.3.2(1)(c) does not establish a limit on the amount of TDR credits associated with the non-residential development intensity of 800 square feet per TDR credit that can be transferred into the Mixed-Use Communities. Therefore, Policy 33.3.2(1)(c) does not establish meaningful and predictable guidelines and standards for the maximum intensity of nonresidential uses based on the transfer of development rights to the Mixed-Use Communities. The amendment does not establish meaningful and predictable guidelines and standards for the maximum intensities of nonresidential uses, based on the transfer of TDR credits, for the TDR receiving areas outside of the DR/GR area. The amendment does not establish meaningful and predictable guidelines and standards for the maximum densities of residential uses, based on the transfer of TDR credits, for the TDR receiving areas outside of the DR/GR area.

Therefore, the amendments are not consistent with the following requirements: Rules 9J-5.005(2) and (6); 9J-5.006(2)(c); 9J-5.006(3)(b)10; 9J-5.006(3)(c)1; and 9J-5.006(3)(c)7, F.A.C.; and Sections 163.3177(6)(a); and 163.3177(8) and (10)e, F.S.

The amendments to Future Land Use Element Objective 33.3, Policies 1.4.5(2)(a), 1.7.14, 33.3.2, 33.3.3, 33.3.4, and 33.3.5 do not establish meaningful and predictable guidelines and standards for the mix of land uses (residential, commercial, and civic uses) allowed within the “Mixed-Use Community” in order to ensure that an appropriate amount of non-residential uses will be developed in association with the residential uses. The policies allow residential use, commercial use, and civic use within the Mixed-Use Community. Policy 33.3.3 states that

*“Within the Mixed-Use Community, significant commercial and civic uses are encouraged. Specific requirements for incorporating these uses into Mixed-Use Communities will be found in the Land Development Code.”* Policy 33.3.5 states that *“The Land Development Code will be amended within one year to specify procedures for concentrating existing development rights on large tracts, for transferring development rights between landowners, for seeking approval of additional acreage subdivisions, and for incorporating commercial and civic uses into Mixed-Use Communities as designated on Map 17.”* The deferral to the land development code does not establish meaningful and predictable guidelines and standards in the comprehensive plan.

The Mixed-Use Community designations on the Map 17 amendment are not supported by relevant and appropriate data and analysis demonstrating coordination of the resulting maximum development potential of the land uses with the short-term and long-term planning and provision of public facilities (central potable water, central sanitary sewer, adequate water supply, roads, and schools) in order to achieve and maintain the adopted level of service standards for public facilities. The amendment is not supported by relevant and appropriate data and analysis for the short-term and long-term planning timeframes based on the maximum development potential of the land uses for the Mixed-Use Communities addressing: (1) identifying the amount of demand for water, sanitary sewer, roads, and schools generated by the Mixed-Use Communities; (2) the impact of the demand upon the operating level of service and adopted level of service standards of public facilities, and the need for public facilities improvements (scope and timing) in order to maintain the adopted level of service of public facilities; and (3) coordination of the public facility improvements with the Capital Improvements Element, Transportation Element, Community Facilities and Services Element, and Public School Facilities Element. The public facilities improvements that would be needed to support the Mixed-Use Community designations

on Map 17 are not coordinated with the elements of the Lee County Comprehensive Plan. The amendment does not coordinate land use planning with the planning and provision of public facilities for the short-term and long-term planning timeframes. The plan policies require that the Mixed-Use Community be developed with central water and sewer, and the TDR program could intensify the development beyond the clustering of existing density. The amendment designates Mixed-Use Communities adjacent to State Road 82, which according to the analysis submitted with the adopted amendment currently operates in a manner that does not meet the adopted level of service standards from Colonial Boulevard to the Hendry County boundary.

The amendments to Lee Plan Maps 4, 14, 17, 20, and 25 show the Alico Road Extension from Alico Road to State Road 82. The Alico Road Extension is not shown on the County Comprehensive Plan Future Transportation Map(s) series; and therefore, Lee Plan Maps 4, 14, 17, 20, and 25 are internally inconsistent with the Future Transportation Maps(s) series regarding the Alico Road Extension.

Therefore, the amendments are not consistent with the following requirements: Rules 9J-5.005(2), (5) and (6); 9J-5.006(2); 9J-5.006(3)(b)1., and 10.; 9J-5.006(3)(c)1., (3)(c)3., (3)(c)5., and (3)(c)7.; 9J-5.006(4)(c); 9J-5.011(1) and (2); 9J-5.013(1), (2), and (3); 9J-5.016(1), (2), (3), and (4); 9J-5.019(2), (3), (4), and (5); 9J-5.025(1), (2), (3), and (4), F.A.C.; and Sections 163.3177(2), (3), (4), (8), (10), and (12)(c), (d), (e), (f), (g), and (h); 163.3177(6)(a), (c), (d), and (j), F.S.

B. Recommended Remedial Actions.

1. Revise the plan policies to establish meaningful and predictable guidelines and standards for the transfer of development rights (TDR) program addressing: (1) a TDR transfer credit generation rate to guide the generation of TDR credits from the TDR sending area; and (2)

the numerical value of the TDR multipliers that may apply to the TDR sending areas and receiving area

2. Revise the plan policies to establish meaningful and predictable guidelines and standards for a TDR transfer rate defining: (1) the relationship between a TDR credit and dwelling units of the receiving areas (within and outside of the DR/GR area); (2) the relationship between a TDR credit and Fractional Ownership/Timeshare Units and Bed and Breakfast Establishments of the receiving areas within the DR/GR area; and (3) the relationship between a TDR credit and nonresidential development of receiving areas outside of the DR/GR area.

3. Revise the amendments to establish meaningful and predictable guidelines and standards defining the location of the TDR receiving areas outside of the DR/GR area.

4. Revise Policy 33.3.2(1)(c) to establish meaningful and predictable guidelines and standards for the maximum intensity of nonresidential uses based on the transfer of development rights to the Mixed-Use Communities. Revise the amendments to establish meaningful and predictable guidelines and standards for the maximum densities and intensities of uses, based on the transfer of TDR credits, for the TDR receiving areas outside of the DR/GR area.

5. Revise the amendments to establish meaningful and predictable guidelines and standards for the mix of land uses (residential, commercial, and civic uses) allowed within the "Mixed-Use Community" in order to ensure that a meaningful amount of non-residential uses will be developed in association with the residential uses.

6. Revise the Future Transportation Map(s) Series to include the Alico Road Extension.

7. Support the amendments with relevant and appropriate data and analysis, based upon TDR transfer rates (the rate at which a TDR credit creates a dwelling unit) established in

the plan policies, identifying the potential number of dwelling units resulting from the TDR program and demonstrating a need for the dwelling units. Support the amendments for the Mixed-Use Community (MUC) designations on the Map 17 amendment with relevant and appropriate data and analysis demonstrating coordination of the resulting maximum development potential of the land uses of the MUC with the short-term and long-term planning and provision of public facilities (central potable water, central sanitary sewer, adequate water supply, roads, and schools) in order to achieve and maintain the adopted level of service standards for public facilities. The analysis should address: (1) identifying the amount of demand for water, sanitary sewer, roads, and schools generated by the Mixed-Use Communities; (2) the impact of the demand upon the operating level of service and adopted level of service of public facilities, and the need for public facilities improvements (scope and timing) in order to maintain the adopted level of service of public facilities; and (3) coordination of the public facility improvements with the Capital Improvements Element, Transportation Element, Community Facilities and Services Element, and Public School Facilities Element. Revise the appropriate elements of the Lee County Comprehensive Plan to address the public facilities improvements and other planning actions (e.g., revision to service area maps) that are needed to support the Mixed Use Communities.

## II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

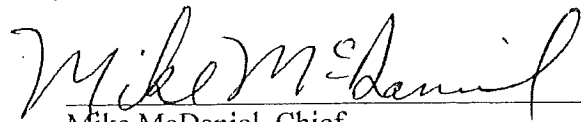
A. Inconsistent provisions. The Amendments are inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187.201, Florida Statutes, including the following provisions:

1. Water Resources. The Amendments are inconsistent with the Goal set forth in Section 187.201(7)(a), F.S., and the Policy set forth in Sections 187.201(7)(b)5., F.S.
  2. Land Use. The Amendments are inconsistent with the Goal set forth in Section 187.201(15)(a), F.S., and the Policies set forth in Sections 187.201(15)(b)1., 3., and 6., F.S.
  3. Urban and Downtown Revitalization. The Amendments are inconsistent with the Goal set forth in Section 187.201(16)(a), F.S., and the Policy set forth in Section 187.201(16)(b)8, F.S.
  4. Public Facilities. The Amendments are inconsistent with the Goal set forth in Section 187.201(17)(a), F.S.
  5. Transportation. The Amendments are inconsistent with the Goal set forth in Section 187.201(19)(a), F.S., and the Policies set forth in Sections 187.201(19)(b)3., 9., and 13., F.S.
  6. Plan Implementation. The Amendments are inconsistent with the Goal set forth in Section 187.201(25)(a), F.S., and the Policies set forth in Section 187.201(25)(b)7.
- B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendments as described above in Section I.

CONCLUSIONS

1. The Amendments identified above are not consistent with the State Comprehensive Plan;
2. The Amendments identified above are not consistent with Chapter 9J-5, F.A.C.;
3. The Amendments identified above are not consistent with the requirements of Chapter 163, Part II, F.S.;
4. The Amendments identified above are not “in compliance,” as defined in Section 163.3184(1)(b) F.S.; and,
5. In order to bring the Amendments into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 11th day of May 2010, at Tallahassee, Florida.



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