



CPA2005-00049
UPDATE GOAL 10 MINING
BoCC SPONSORED
AMENDMENT
TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

LPA Public Hearing Document
for the
November 27th, 2006 Public Hearing

Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 479-8585

November 15, 2006

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2005-00049**

Text Amendment

Map Amendment

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

STAFF REPORT PREPARATION DATE: November 15, 2006

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

2. REQUEST:

Adopt a new Objective and Policies under Goal 10: Natural resource Extraction to address the further impacts of mining and the steps needed for adequate mitigation or prevention of adverse impacts. Further, recommendations are made to prevent future land use conflicts between mining and other uses in rural areas. More specifically, Goal 10, natural Resource Extraction, will be expanded to include measures for rock mining, and for mitigation of rock mining impacts with adjacent land uses.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION:

Planning Staff recommends that the Board of County Commissioners transmit the proposed amendment.

2. PROPOSED TRANSMITTAL LANGUAGE

Objective 10.3: Coordinate mining activities and restoration and redevelopment plans with water supply planning activities and future residential activities.

Policy 10.3.1. Mining applications are to include design features that maintain or enhance the predevelopment surface and groundwater levels for the surrounding areas, including the up gradient topographical areas.

Policy 10.3.2 Mining applications are to include assessments of the change in flow, timing of travel, and direction of surface and groundwater systems in the impacted area. Particular attention is to be given to connectivity and the potential travel time to wellfields and concentrations of domestic self supplied users.

Policy 10.3.3 Mining applications are to include assessments of the potential impact on the water quality of the lakes resulting from mining due to runoff or groundwater flow of the current and likely land uses surrounding the site.

Policy 10.3.4. The depth of mining for any excavation proposed will be limited to that necessary to prevent the breach of aquacludes, which separate the aquifer the mining is occurring within from any other aquifer. Other limitations on mining setbacks or depths will be determined on a case by case basis, tied to existing neighboring uses, and specific hydro geologic issues tied to the site.

Policy 10.3.5 Annual reports on mining will be required in any permit approval, which are to include the areas under active mining, 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.

Policy 10.3.6. Any restoration activities required of a mining permit, and any proposed redevelopment of a mined site tied to a mining permit must consider the timing of development, including mining, of surrounding sites. Residential uses will be limited in the timing of their placement until surrounding mining operations cease creating groundwater or geological impacts affecting the foundations of structures.

3. BASIS AND RECOMMENDED FINDINGS OF FACT:

The report *Lee County Groundwater Resource and Mining Study* was prepared under contract with a team of geologists. The draft report was dated June 2005 and amended in August 2006. The report evaluated, with the information available, the likely commercial rock deposits and the current mining operations. It identified the most likely location of future mining, with the application of a series of overlays indicating community and environmental constraints. The remaining areas were deemed to meet the county wide need for rock aggregate for the planning horizon. The report may be found in its entirety at:

http://www.lee-county.com/dcd1/Downloads/Documents/Studies_Reports/GroundwaterResource/GR&M.htm

The issue of mining and claims of nuisance on surrounding rural residential land has repeatedly come before the Board of County Commissioners. Additionally, various mining proposals include reclamation plans that involve some conversion to residential. When the mining activity on site or on adjacent parcels continues while the residential component is developed, additional conflict occurs. Ensuring a separation in time between the mining and subsequent residential activity will prevent or mitigate such conflict.

C. BACKGROUND INFORMATION

The Groundwater Resource and Mining report was recommended through the Smart Growth Committee. In addition, the 2004 Evaluation and Appraisal Report, as amended, indicated that the Report would be prepared to update information on the groundwater and mining resources of the County.

The report updates the information on rock of minable quality, based upon current commercial industry economics. It provides an assessment on current production, and a series of estimates of rock availability, with and without environmental constraints. It also provides an assessment of impacts on water resources by mining operations and by the creation of lakes in areas with lesser Evapotranspiration (E/T) characteristics. The report further evaluates the impact of mines on the topography and gradient of water flow.

The report provides recommendations that address the impacts of mining, and provides for remedies, in regard to water resources.

Previous plan amendments and land development regulations have attempted to mitigate between activities of mining and impacts on other land uses in proximity. The recent blasting ordinance serves as one such amendment. However, road noise and truck traffic, deterioration of road beds due to heavy vehicles, and temporary changes in water tables lead to concerns of traffic accidents, housing damage, and other incidents for residential living. Further effort is needed to prevent nuisance, by timing land use transitions from mining to other uses.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

Aggregate is a critical ingredient in making the "built environment." A key factor in the cost of aggregate, and hence the cost of the built environment, is the transportation cost of this very heavy and bulky material. It is common to use the most suitable materials found closest to the site of development within the region determined by the transportation network and distribution of materials.

Lee County has large deposits of such materials. It is known, however, that the extraction of these materials have impacts on the natural system, involving the utter loss of all surficial habitat, and cause major changes to the water budget of the impact area. Also, mining is an uncomfortable neighbor for residential land uses.

The County has used its land use authority to reduce the nuisance effect of mining. The reverse is also

being determined to be true—residential development occurring adjacent to active mining does generate concerns about impacts on the newly established residential areas, leading to demands for mining changes that were not required prior to the residential development.

Most mining is occurring or expected to occur in the headwaters of the County's natural water courses or in the recharge areas of the surficial aquifer, the source of water for many agriculture and domestic self supplied users, as well as Lee County Utility. Further, the aggregate comes from another aquifer, also a source of water for utility, agriculture, and domestic self supplied users. Maintaining surficial and groundwater storage is critical for the rest of the County's development and environmental management strategies. With proper precautions, mining can assist in furthering these strategies rather than being a deterrent.

The primary supporting document on mining and water resources is the Lee County Groundwater and Mining Study, and the recommended policies 10.3.1-10.3.5 are drawn from this report. The report was peer reviewed, and amendments to the report made in August 2006, but none of the peer issues on mining involved conflicts with the recommendations, which have been converted into the policies above.

Item 10.3.6 addresses a concern that reclamation plans for residential use should at a minimum be timed to prevent nuisance conflicts with mining on adjacent tracts.

B. CONCLUSIONS

The recommendations contained in the Groundwater Resource and Mining Study should be implemented in the Lee Plan. Additional protection for future residential development of mining sites should be implemented.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit the proposed Objective and Policies.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: November 25, 2006

A. LOCAL PLANNING AGENCY REVIEW

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT
SUMMARY**

1. RECOMMENDATION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

NOEL ANDRESS	_____
DEREK BURR	_____
RONALD INGE	_____
CARLETON RYFFEL	_____
RAYMOND SCHUMANN, ESQ.	_____
RAE ANN WESSEL	_____
VACANT	_____

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRAIN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRIAN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN

Noble, Matthew A.

From: Bill Spikowski [bill@spikowski.com]
Sent: Friday, December 07, 2007 5:29 PM
To: Noble, Matthew A.
Subject: Re: CPA2005-49

Matt, most of this looks good, but please consider the following:

Proposed Policy 10.3.1 is very problematic at least as to DR/GR land because it contains a standard that is clearly weaker than mandated by Lee Plan Policy 1.4.5: "Land uses in these [DR/GR] areas must be compatible with maintaining surface and groundwater levels at their historic levels."

Substituting "predevelopment" for "historic" alters the meaning of Policy 1.4.5 entirely. Often, fairly recent farming ditches have lowered "historic" levels to today's "predevelopment" levels; or the current drought has had the same effect. Those levels shouldn't become the basis for making those new levels the permanent baseline! The wording in Policy 1.4.5 is the county's strongest defense against inappropriate mining applications; don't give any support to the contention I expect to hear from lawyers for mining industry that "historic" means whatever levels are out there the day before they start mining.

Also, Policy 10.3.2 say to pay "particular attention to connectivity" without explaining what that phrase means. Does this mean hydraulic connectivity between the lake and wells or wetlands? Connectivity for wildlife moving through the area? Connectivity for a future road network? Connectivity between mines for better handling of raw materials?

Also, are you sure you want to go ahead with this amendment given all the new stuff likely to come out of the upcoming DR/GR study?

Noble, Matthew A. wrote:

>
>
> -----Original Message-----
> From: Bill Spikowski [mailto:bill@spikowski.com]
> Sent: Friday, December 07, 2007 11:36 AM
> To: Noble, Matthew A.
> Subject: CPA2005-49
>
> I wasn't aware that this amendment was pending, can you send me the
> staff report?

Noble, Matthew A.

From: Bill Spikowski [bill@spikowski.com]
Sent: Friday, December 07, 2007 5:29 PM
To: Noble, Matthew A.
Subject: Re: CPA2005-49

Matt, most of this looks good, but please consider the following:

Proposed Policy 10.3.1 is very problematic at least as to DR/GR land because it contains a standard that is clearly weaker than mandated by Lee Plan Policy 1.4.5: "Land uses in these [DR/GR] areas must be compatible with maintaining surface and groundwater levels at their historic levels."

Substituting "predevelopment" for "historic" alters the meaning of Policy 1.4.5 entirely. Often, fairly recent farming ditches have lowered "historic" levels to today's "predevelopment" levels; or the current drought has had the same effect. Those levels shouldn't become the basis for making those new levels the permanent baseline! The wording in Policy 1.4.5 is the county's strongest defense against inappropriate mining applications; don't give any support to the contention I expect to hear from lawyers for mining industry that "historic" means whatever levels are out there the day before they start mining.

Also, Policy 10.3.2 say to pay "particular attention to connectivity" without explaining what that phrase means. Does this mean hydraulic connectivity between the lake and wells or wetlands? Connectivity for wildlife moving through the area? Connectivity for a future road network? Connectivity between mines for better handling of raw materials?

Also, are you sure you want to go ahead with this amendment given all the new stuff likely to come out of the upcoming DR/GR study?

Noble, Matthew A. wrote:

>
>
> -----Original Message-----
> From: Bill Spikowski [mailto:bill@spikowski.com]
> Sent: Friday, December 07, 2007 11:36 AM
> To: Noble, Matthew A.
> Subject: CPA2005-49
>
> I wasn't aware that this amendment was pending, can you send me the
> staff report?

CPA2005-00049

The Basis and Recommended Findings of Fact on which this Comp Plan Amendment is based is the *Lee County Groundwater Resource and Mining Study*. This study states “As a model, Lee County is considering the Dade County Lakebelt Study and ongoing actions as a blueprint.” In the mining section the study’s authors state that mining has two impacts: Groundwater and Mining Pits which they refer to as “lakes”. There is no mention of the long list of other impacts to wetlands, wildlife, plants, invertebrate species, the local residents, perpetuating urban sprawl and others – many of which are documented in other geologic, ecological, and hydrological studies.

In the March 2006 “Lake Belt Decision” Judge Hoeveler ruled against the Dade County Lake Belt miners, the Corp and FWS. The Hoeveler decision contents that the permits for the Lake Belt Mining should not have been issued. Further that the Corps should have considered the condition of the wetlands environment and the impact on the quality of the human environment; as well they failed to analyze all the direct, indirect and cumulative impacts resulting from mining. He indicated that many of these impacts were known and ignored at the time the permits were issued. Further Judge Hoeveler states the FWS and Corps decisions (to issue permits) were overly influenced by factors that are not as important as the protection of the natural environment such as pressure from the state legislature to use a mitigation funding plan before it expired and the momentum of decades of mining in that area.

Following the same mistakes of Dade County, Lee County is currently considering making changes to the Comprehensive Plan without discovering and analyzing the direct, indirect and cumulative impacts resulting from mining.

At the very least the Lee County BOCC should make the following changes to CPA2005-00049.

PROPOSED NEW OBJECTIVE AND POLICIES UNDER ELEMENT II – FUTURE LAND USE, GOAL 10: NATURAL RESOURCE EXTRACTION

OBJECTIVE 10.3: Coordinate mining activities; evaluation, monitoring, restoration and redevelopment plans with water supply planning activities, surface water management, wetland protection, wildlife conservation, and future residential activities, regional impacts, and cumulative, direct and indirect impacts.

Rationale: Mining activities should never proceed without considering all impacts. The failure to thoroughly consider impacts has lead to the necessity for heroic efforts such as the Everglades Restoration, Lee County’s contamination from the problems with Lake Okeechobee, drinking water contamination in Dade County from mines impacting the well cone of influence. Direct impacts are easy to identify. Indirect effects requires a careful study of an action and its consequences as indirect effects are later in time or farther removed in distance, but still reasonably foreseeable with due diligence. A cumulative impact is the “incremental impact of the action when added to the other past, present and reasonably foreseeable future actions... regardless of what person or agency undertakes such actions.

POLICY 10.3.1. Mining applications will include design features and supporting data to maintain or and enhance the predevelopment surface and groundwater levels, hydroperiods and flows for the appropriate watersheds, ~~and~~ sub-basins and surrounding properties.

Rationale: Operating at the watershed or sub-basin level means we are using data that averages and sets trend lines. This means the data will ignore real variation in surface and groundwater levels. The groundwater level next to the mine could drop significantly – affecting surrounding land owners by killing trees, changing vegetation and habitat – and still not show up in the averaged data or trend line. When we add the element of surrounding properties the data will also have to look at specific “real data” that is not averaged.

POLICY 10.3.2. Mining applications will include baseline monitoring, onsite, adjacent lands, and regional assessments of the change in flow, timing of travel, and direction of surface and groundwater systems in the impacted area. Particular attention will be given to connectivity and the potential travel time to wellfields and ~~concentrations of~~ domestic self supplied users.

Rationale: The addition of “adjacent lands” serves the same purpose as the 10.3.1 addition. Deleting “concentrations of” domestic self suppliers recognizes that the DRGR restricts development to 1 unit per 10 or 20 acres – certainly not a “concentration” of self supplied users. Leaving the word “concentrations” in this policy effectively eliminates consideration of all agriculture and DRGR residential users.

POLICY 10.3.3. Mining applications will include assessments of the potential impact on the aquatic ecology and water quality of the ~~lakes~~ quarry pits resulting from ~~lake~~ quarry pit design and post mining impacts including runoff, groundwater flow, primary and secondary porosity, creation of preferential flow paths in the Karst Limestone, groundwater contamination, flooding and likely current and proposed future land uses surrounding the site.

Rationale: The EPA differentiates between a lake (natural) and a reservoir. A mine pit is not a lake. This is a “make nice” term trying to minimize the negative perception of mining or quarry pits. This is improper for the Comp plan. Mining pits also can cause subsidence to surrounding properties which leads to flooding and reduced canopy cover, or through secondary porosity and preferential flow paths that increase transmissive groundwater flow which can lead to more rapid movement of groundwater and contaminates. (See Lee County’s recent Groundwater Resource Study, section VIII, pages 87-88.) Likely? Who gets to decide what is likely? If I understand correctly the legal concept or standard is “current and proposed future land use”.

POLICY 10.3.4. The maximum allowed depth of mining for any excavation proposed will be limited to that necessary to prevent the breach of aquacludes or change in water quality within the aquaclude separating the aquifer the mining is within from any other aquifer. In no instance shall a mine be located closer than 1.25 miles to any residence. Other limitations on mining

setbacks or depths will be determined on a case by case basis, tied to existing neighboring uses, mining materials transport routes, and specific hydrogeologic, wetlands protection and wildlife conservation issues.

Rationale: "Maximum allowed" depth has been added to try to try to clarify that every mining application is not guaranteed the depth to aquaclude. This policy failed to provide a standard set-back leaving affected parties with the burden of hiring attorneys and experts for every new mining application. Jim Lytell has evidence that the test blasting at the proposed Schwab mine sit damaged his house that was 1.25 miles from the mining blast site. The addition of "mining materials transport route" gives voice to those affected by the dangerous and difficult dump truck traffic.

POLICY 10.3.5 Annual reports on mining will be required in any permit approval, which swill include a continuation of the staff recommended baseline monitoring, the areas under active mining, 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.

POLICY 10.3.6 Any significant adverse impacts identified during mining or post-mining will result in immediate cessation of mining activities, commencement of the mine's restoration plan and the withdrawal of the mining permit. ~~be subject to adaptive management and corrective measures.~~

Rationale: Both this policy and the following policy demonstrate the pro-mining bias. Policies with no bias would consider both impacts to mines by others and impacts of mines to others. While corrective measures might be tried for a very limited amount of time (if this can be done without creating an endless list of "we'll try this next") all mining should immediately cease in the event of adverse impacts. Further since miners have to demonstrate there are no significant impacts of mining to others on their application, then encountering adverse impacts means their initial application was in error. Therefore the mining permit should be withdrawn and restoration should begin immediately. Anything short of this means we value digging rock out of the ground more than we value our environment, our safely, or our homes.

POLICY 10.3.7. Any restoration activities required of a mining permit, and any proposed redevelopment of a mined site tied to a mining permit must consider the restoration and sustainable management of all ~~lakes~~ quarry pits, preserves and buffer areas and the timing of development, including mining, of surrounding sites. Residential uses when deemed appropriate, will be limited in the timing of their placement until surrounding mining operations cease creating groundwater or geological impacts affecting the foundations of structures.

CPA 2005-00046

Additionally, the Lee County BOCC should make the following changes to CPA2005-00046.

4.3.2 reads "The permitting measure developed should improve the ~~STORAGE within~~ existing natural and manmade flowways."

Rationale: I believe the words storage within is a precursor to developing a "Lake Belt" in Lee County (similar to the Miami Area Lake Belt that was stopped by Judge Hoeveler in his March 2006 Motion for Summary Judgment in the Southern District Court; Plaintiffs for the case were the Sierra Club, National Resources Defense Council and National Parks Conservation Association; Defendants Army Corp of Engineers, US Fish and Wildlife Service, Miami-Dade Limestone Products, Florida Rock, Rinker, and others).

In this litigation the Sierra Club, NRDC and NPCA claimed

"the Corps violated NEPA by failing to fully consider the "no mining" or "curtail future mining" alternatives to approving the mining plan, and that the permits should not have issued because the permit applicants failed to demonstrate, as required by the CWA, that there were no practicable alternatives to permitting mining in the Lake Belt. According to Plaintiffs, the Corps' EIS failed to analyze all direct, indirect and cumulative impacts resulting from the mining -- particularly as to groundwater seepage, contamination of drinking water pumped from the Aquifer through wellheads in the Lake Belt, the destruction of endangered wood stork habitat, and increased urbanization -- and that the ROD failed to provide an adequate discussion of what mitigation would be required for the inevitable adverse effects of the mining, e.g. the conversion of thousands of acres of wetlands into mined-out deep quarry pits. Plaintiffs also attack the ROD, which included the Corps' conclusion that the permit action would "not have a significant impact on the quality of the human environment," for failing to adequately explain why mining was being approved despite the strong objections that had been raised by several governmental agencies and others. Plaintiffs argue that the Corps' failure to hold a public hearing or to encourage public participation in the permitting process violated the CWA and NEPA; for example, Plaintiffs note that the public never received notice of the permits' ten "special conditions" until the permits were issued, even though those "special conditions" revealed compromises as to the transfer of mined property to the public and other issues that had been the subject of substantial criticism. In addition, Plaintiffs claim that the Corps and FWS erred by deciding not to enter into formal consultation under the ESA regarding the potential impact on the wood stork population, and by failing to re-initiate consultation after the receipt of additional information on the wood stork's habitat, as well as by not taking required steps to protect other species."

Smart Growth in Lee County has previously endorsed putting mining in the DRGR in order to develop water storage pits similar to the mining industry named Lake Belt in Dade County. Both Wayne Daltry and Bill Hammond pushed this idea as a potential solution to future Lee County Water issues. I believe Hammond was part of the Lake

Belt Committee, a state task force (formed in 1992) that set up the "Lake Belt" idea in Dade County. This committee, as well as the Army Corp of Engineers, was working under the assumption that they could not refuse the rock miners because of the successful 1980's Florida Rock takings litigation. (The Florida Rock claim was the denial of permits for mining in the Lake Belt areas was an unconstitutional taking of property. They recovered \$21 million fro 1560 acres from the United States Government.)

The Hoeveler decision contents that the permits for the Lake Belt Mining should not have been issued. Further that the Corps should have considered the condition of the wetlands environment, the cumulative, direct and indirect impacts, known at the time the permits were issued. Further Judge Hoeveler indicated the FWS and Corps decisions were overly influenced by factors that are not as important as the protection of the natural environment such as pressure from the state legislature to use a mitigation funding plan and the momentum of decades of mining in that area.

Putting mine pits in the Lee County DRGR is a terrible idea made horrific by the contemplation of turning these future pits into Water Supply reservoirs. Read the 91 page legal document noted above for all the gory details. Here are a few highlights:

Addressing Aquifer/Wellfield contaminations and quoting from "Description and Analysis of Full-Scale Tracer Trials Conducted at the Northwest Wellfield, Miami-Dade county Florida," DERM Water Supply Section, August 2000 as cited in the Hoeveler Decision:

"[Limestone] makes up the Biscayne aquifer, which stores and filters the water supply for Miami-Dade County. Removal of the aquifer material by rock mining leaves the remaining aquifer more venerable to contamination from the newly created surface water bodies.....Implicit in the creation of wellfield protection zones is the assumption that the hydrogeologic parameters do not vary in time. However, the Very nature of rock mining, removing the geologic materials, negates this assumption. There is a concern that existing and future rockmining excavations serve to expand the travel time contours beyond those used to define the existing wellfield protection area....Unconfined and located at or near the land surface, the Biscayne Aquifer is made up mainly of layers of limestone and sand....The generally high hydraulic conductivity and the many passages through the solution-riddled limestone offer little resistance to flow. The result is one of the most permeable aquifers in the world, which quickly responds to slight differences in the water table. As a result...the direction and velocity of groundwater flow is strongly influenced by water levels in adjacent canals and other surface water bodies."

While the limestone in Lee County is of a different formation than the limestone in the Biscayne Aquifer, Lee County has no water studies that take the Karst nature of the this limerock into consideration. Dade County government assumed that

hydraulic conductivity and transmissivities (the rate at which water travels underground through limerock) was 4 days as opposed to the expected 30 days discovered after the Full-Scale Tracer Trials. This is documented in the "Pink Underwear Story" written by Steven Dudley of the Miami New Times.

steven.dudley@miaminewtimes.com

<http://www.corkscrewroad.com/archives/archive-jun.htm>

Quoting from "Northwest Wellfield Watershed Protection Plan," August 16, 2000 as cited in the Hoeveler Decision:

"The presence of Lakes in the vicinity of the wellfield increases the risk to the drinking water supply by two routes. The miles of increasing shoreline provide a route for pathogens, as well as other pollutants, to enter the lakes either via stormwater runoff contaminated with pathogens, infected animals access the shorelines, or spills of contaminants near shorelines. A more direct route is via waterfowl flying in to use the lakes. Once in the lake, the pathogens/pollutants quickly disperse from the shoreline or middle of the lake. Depending on the specific gravity or other factors, the particular pathogen/pollutant will mix through the vertical extent of the lake and be drawn towards the wellfield. Water transport out of lakes and canals into the surrounding aquifer and towards the wellfield is primarily through the porous sides...Modern rocking techniques now can excavate up to 85-ft. depths, well into the various preferential flow zones of the drinking water wells (40 -80 ft). The preferential flow zones are more porous, providing less attenuation, particularly for pathogens of human health concern."

The DRGR is agricultural, full of citrus and agricultural chemicals, cows, waterfowl, bears, panther, bobcat, otters, raccoons, fox, and other wildlife. It is also full of wetlands, sloughs and flowways, resident wells, and agricultural wells. Primarily it is where the rain percolates down through the filtering limerock to nourish and our aquifers which are Lee County's water supply. In the case of the Floridan (lower) aquifer - the water supply throughout Florida and Southern Georgia.

**CPA2005-49
UPDATE GOAL 10 NATURAL
RESOURCE EXTRACTION
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

LPA Public Hearing Document
for the
November 19th, 2007 Public Hearing

*Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 479-8585*

November 9, 2007

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2005-00049**

Text Amendment

Map Amendment

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

INITIAL STAFF REPORT PREPARATION DATE: November 15, 2006

REVISED STAFF REPORT PREPARATION DATE: December 1, 2006

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

2. REQUEST:

Adopt a new Objective and Policies under Goal 10: Natural resource Extraction to address the further impacts of mining and the steps needed for adequate mitigation or prevention of adverse impacts. Further, recommendations are made to prevent future land use conflicts between mining and other uses in rural areas. More specifically, Goal 10, natural Resource Extraction, will be expanded to include measures for rock mining, and for mitigation of rock mining impacts with adjacent land uses.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION:

Planning Staff recommends that the Board of County Commissioners transmit this proposed amendment to the Florida Department of Community Affairs for their review.

2. PROPOSED TRANSMITTAL LANGUAGE

PROPOSED NEW OBJECTIVE AND POLICIES UNDER ELEMENT II - FUTURE LAND USE, GOAL 10: NATURAL RESOURCE EXTRACTION

OBJECTIVE 10.3: Coordinate mining activities; evaluation; monitoring; restoration and redevelopment plans with water supply planning activities; surface water management; wetland protection; wildlife conservation; and future residential activities.

POLICY 10.3.1. Mining applications will include design features and supporting data to maintain or enhance the predevelopment surface and groundwater levels, hydroperiods and flows for the appropriate watersheds and sub-basins.

POLICY 10.3.2. Mining applications will include baseline monitoring, onsite and regional assessments of the change in flow, timing of travel, and direction of surface and groundwater systems in the impacted area. Particular attention will be given to connectivity and the potential travel time to wellfields and concentrations of domestic self supplied users.

POLICY 10.3.3. Mining applications will include assessments of the potential impact on the aquatic ecology and water quality of the lakes resulting from lake design and post mining impacts including runoff or groundwater flow and likely land uses surrounding the site.

POLICY 10.3.4. The depth of mining for any excavation proposed will be limited to that necessary to prevent the breach of aquacludes or change in water quality within the aquaclude separating the aquifer the mining is within from any other aquifer. Other limitations on mining setbacks or depths will be determined on a case by case basis, tied to existing neighboring uses, and specific hydrogeologic, wetlands protection and wildlife conservation issues.

POLICY 10.3.5 Annual reports on mining will be required in any permit approval, which will include a continuation of the staff recommended baseline monitoring, the areas under active mining, 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.

POLICY 10.3.6 Any significant adverse impacts identified during mining or post-mining will be subject to adaptive management and corrective measures.

POLICY 10.3.7. Any restoration activities required of a mining permit, and any proposed redevelopment of a mined site tied to a mining permit must consider the restoration and sustainable management of all lakes, preserves and buffer areas and the timing of development, including

mining, of surrounding sites. Residential uses when deemed appropriate, will be limited in the timing of their placement until surrounding mining operations cease creating groundwater or geological impacts affecting the foundations of structures

3. BASIS AND RECOMMENDED FINDINGS OF FACT:

The report *Lee County Groundwater Resource and Mining Study* was prepared under contract with a team of geologists. The draft report was dated June 2005 and amended in August 2006. The report evaluated, with the information available, the likely commercial rock deposits and the current mining operations. It identified the most likely location of future mining, with the application of a series of overlays indicating community and environmental constraints. The remaining areas were deemed to meet the county wide need for rock aggregate for the planning horizon. The report may be found in its entirety at:

http://www.lee-county.com/dcd1/Downloads/Documents/Studies_Reports/GroundwaterResource/GR&M.htm

The issue of mining and claims of nuisance on surrounding rural residential land has repeatedly come before the Board of County Commissioners. Additionally, various mining proposals include reclamation plans that involve some conversion to residential. When the mining activity on site or on adjacent parcels continues while the residential component is developed, additional conflict occurs. Ensuring a separation in time between the mining and subsequent residential activity will prevent or mitigate such conflict.

C. BACKGROUND INFORMATION

The Groundwater Resource and Mining report was recommended through the Smart Growth Committee. In addition, the 2004 Evaluation and Appraisal Report, as amended, indicated that the Report would be prepared to update information on the groundwater and mining resources of the County.

The report updates the information on rock of minable quality, based upon current commercial industry economics. It provides an assessment on current production, and a series of estimates of rock availability, with and without environmental constraints. It also provides an assessment of impacts on water resources by mining operations and by the creation of lakes in areas with lesser Evapotranspiration (E/T) characteristics. The report further evaluates the impact of mines on the topography and gradient of water flow.

The report provides recommendations that address the impacts of mining, and provides for remedies, in regard to water resources.

Previous plan amendments and land development regulations have attempted to mitigate between activities of mining and impacts on other land uses in proximity. The recent blasting ordinance serves as one such amendment. However, road noise and truck traffic, deterioration of road beds due to heavy vehicles, and temporary changes in water tables lead to concerns of traffic accidents, housing damage,

and other incidents for residential living. Further effort is needed to prevent nuisance, by timing land use transitions from mining to other uses.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

Aggregate is a critical ingredient in making the “built environment.” A key factor in the cost of aggregate, and hence the cost of the built environment, is the transportation cost of this very heavy and bulky material. It is common to use the most suitable materials found closest to the site of development within the region determined by the transportation network and distribution of materials.

Lee County has large deposits of such materials. It is known, however, that the extraction of these materials have impacts on the natural system, involving the utter loss of all surficial habitat, and cause major changes to the water budget of the impact area. Also, mining is an uncomfortable neighbor for residential land uses.

The County has used its land use authority to reduce the nuisance effect of mining. The reverse is also being determined to be true—residential development occurring adjacent to active mining does generate concerns about impacts on the newly established residential areas, leading to demands for mining changes that were not required prior to the residential development.

Most mining is occurring or expected to occur in the headwaters of the County’s natural water courses or in the recharge areas of the surficial aquifer, the source of water for many agriculture and domestic self supplied users, as well as Lee County Utility. Further, the aggregate comes from another aquifer, also a source of water for utility, agriculture, and domestic self supplied users. Maintaining surficial and groundwater storage is critical for the rest of the County’s development and environmental management strategies. With proper precautions, mining can assist in furthering these strategies rather than being a deterrent.

The primary supporting document on mining and water resources is the Lee County Groundwater and Mining Study, and the recommended policies 10.3.1-10.3.5 are drawn from this report. The report was peer reviewed, and amendments to the report made in August 2006, but none of the peer issues on mining involved conflicts with the recommendations, which have been converted into the policies above.

Item 10.3.6 addresses a concern that reclamation plans for residential use should at a minimum be timed to prevent nuisance conflicts with mining on adjacent tracts.

B. CONCLUSIONS

The recommendations contained in the Groundwater Resource and Mining Study should be implemented in the Lee Plan. Additional protection for future residential development of mining sites should be implemented.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit this proposed amendment to the Florida Department of Community Affairs for their review.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: November 27, 2006

A. LOCAL PLANNING AGENCY REVIEW

The Local Planning Agency was scheduled to review this proposal at their November 27th Regular Meeting. One Local Planning Agency member raised several concerns. This member felt that meeting the new proposed requirements would require the disclosure of proprietary information. There was also a concern about the modeling requirements to comply with the travel times to wellfields. The meeting was about to lose a quorum and the Local Planning Agency approved a motion to recommend moving this amendment to the next round of plan amendments. Following this recommendation will delay this amendment to Local Planning Agency hearings in the spring of 2007 and Board transmittal hearing in the early summer of 2007.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION: The Local Planning Agency recommends that this proposed amendment be moved to the next round of plan amendments. Given the issues raised and the lack of sufficient answers to the questions raised, staff concurs with the motion to continue to the next round.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

NOEL ANDRESS	<u>AYE</u>
DEREK BURR	<u>AYE</u>
RONALD INGE	<u>AYE</u>
CARLETON RYFFEL	<u>ABSENT</u>
RAYMOND SCHUMANN, ESQ.	<u>AYE</u>
RAE ANN WESSEL	<u>AYE</u>
VACANT	<u> </u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: December 13, 2006

A. BOARD REVIEW: Staff recommended that the amendment be put in to the next cycle to allow for more time to address issues regarding the amendment. A member of the public then suggested a moratorium be put on any new mine applications until the amendment is reconsidered. The member of the public further requested that the planners and the Commission consider a more extensive definition of the word "adjacent" and to also develop a definition for the differences between water bodies.

A Staff member then asked for clarification about processing already-filed mining cases. A Board member answered that staff should bring it up at M and P.

A Staff member then requested a motion to hold an adoption hearing for the amendment in the spring of 2007. The motion was approved.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY: A Staff member requested a motion be made to defer the amendment to the next amendment cycle.

1. **BOARD ACTION:** The Board voted to continue the case to the next regular amendment cycle.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The motion was approved to allow Staff more time to study the amendment.

C. VOTE:

BRAIN BIGELOW

AYE

TAMMARA HALL

AYE

BOB JANES

AYE

RAY JUDAH

AYE

FRANK MANN

AYE

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

DATE OF PUBLIC HEARING: December 17, 2007

A. LOCAL PLANNING AGENCY REVIEW

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT
SUMMARY**

1. RECOMMENDATION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

NOEL ANDRESS

DEREK BURR

RONALD INGE

CARLETON RYFFEL

RAYMOND SCHUMANN, ESQ.

LELAND M. TAYLOR

RAE ANN WESSEL

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRAIN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN

**PART VII - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

**PART VIII - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRIAN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN

CPA2005-00049
UPDATE GOAL 10 NATURAL
RESOURCE EXTRACTION
BoCC SPONSORED
AMENDMENT
TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

BoCC Public Hearing Document
for the
December 13th, 2006 Public Hearing

Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 479-8585

December 1, 2006

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2005-00049**

Text Amendment

Map Amendment

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

INITIAL STAFF REPORT PREPARATION DATE: November 15, 2006

REVISED STAFF REPORT PREPARATION DATE: December 1, 2006

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

2. REQUEST:

Adopt a new Objective and Policies under Goal 10: Natural resource Extraction to address the further impacts of mining and the steps needed for adequate mitigation or prevention of adverse impacts. Further, recommendations are made to prevent future land use conflicts between mining and other uses in rural areas. More specifically, Goal 10, natural Resource Extraction, will be expanded to include measures for rock mining, and for mitigation of rock mining impacts with adjacent land uses.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION:

Planning Staff recommends that the Board of County Commissioners move this proposed amendment to the next round of plan amendments.

2. PROPOSED TRANSMITTAL LANGUAGE

PROPOSED NEW OBJECTIVE AND POLICIES UNDER ELEMENT II - FUTURW LAND USE, GOAL 10: NATURAL RESOURCE EXTRACTION

OBJECTIVE 10.3: Coordinate mining activities; evaluation, monitoring, restoration and redevelopment plans with water supply planning activities, surface water management, wetland protection, wildlife conservation and future residential activities.

POLICY 10.3.1. Mining applications will include design features and supporting data to maintain or enhance the predevelopment surface and groundwater levels, hydroperiods and flows for the appropriate watersheds and sub-basins.

POLICY 10.3.2. Mining applications will include baseline monitoring, onsite and regional assessments of the change in flow, timing of travel, and direction of surface and groundwater systems in the impacted area. Particular attention will be given to connectivity and the potential travel time to wellfields and concentrations of domestic self supplied users.

POLICY 10.3.3. Mining applications will include assessments of the potential impact on the aquatic ecology and water quality of the lakes resulting from lake design and post mining impacts including runoff or groundwater flow and likely land uses surrounding the site.

POLICY 10.3.4. The depth of mining for any excavation proposed will be limited to that necessary to prevent the breach of aquacludes or change in water quality within the aquaclude separating the aquifer the mining is within from any other aquifer. Other limitations on mining setbacks or depths will be determined on a case by case basis, tied to existing neighboring uses, and specific hydrogeologic, wetlands protection and wildlife conservation issues.

POLICY 10.3.5 Annual reports on mining will be required in any permit approval, which swill include a continuation of the staff recommended baseline monitoring, the areas under active mining, 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.

POLICY 10.3.6 Any significant adverse impacts identified during mining or post-mining will be subject to adaptive management and corrective measures.

POLICY 10.3.7. Any restoration activities required of a mining permit, and any proposed redevelopment of a mined site tied to a mining permit must consider the restoration and sustainable management of all lakes, preserves and buffer areas and the timing of development, including mining, of surrounding sites. Residential uses when deemed appropriate, will be limited in the

timing of their placement until surrounding mining operations cease creating groundwater or geological impacts affecting the foundations of structures

3. BASIS AND RECOMMENDED FINDINGS OF FACT:

The report *Lee County Groundwater Resource and Mining Study* was prepared under contract with a team of geologists. The draft report was dated June 2005 and amended in August 2006. The report evaluated, with the information available, the likely commercial rock deposits and the current mining operations. It identified the most likely location of future mining, with the application of a series of overlays indicating community and environmental constraints. The remaining areas were deemed to meet the county wide need for rock aggregate for the planning horizon. The report may be found in its entirety at:

http://www.lee-county.com/dcd1/Downloads/Documents/Studies_Reports/GroundwaterResource/GR&M.htm

The issue of mining and claims of nuisance on surrounding rural residential land has repeatedly come before the Board of County Commissioners. Additionally, various mining proposals include reclamation plans that involve some conversion to residential. When the mining activity on site or on adjacent parcels continues while the residential component is developed, additional conflict occurs. Ensuring a separation in time between the mining and subsequent residential activity will prevent or mitigate such conflict.

C. BACKGROUND INFORMATION

The Groundwater Resource and Mining report was recommended through the Smart Growth Committee. In addition, the 2004 Evaluation and Appraisal Report, as amended, indicated that the Report would be prepared to update information on the groundwater and mining resources of the County.

The report updates the information on rock of minable quality, based upon current commercial industry economics. It provides an assessment on current production, and a series of estimates of rock availability, with and without environmental constraints. It also provides an assessment of impacts on water resources by mining operations and by the creation of lakes in areas with lesser Evapotranspiration (E/T) characteristics. The report further evaluates the impact of mines on the topography and gradient of water flow.

The report provides recommendations that address the impacts of mining, and provides for remedies, in regard to water resources.

Previous plan amendments and land development regulations have attempted to mitigate between activities of mining and impacts on other land uses in proximity. The recent blasting ordinance serves as one such amendment. However, road noise and truck traffic, deterioration of road beds due to heavy vehicles, and temporary changes in water tables lead to concerns of traffic accidents, housing damage, and other incidents for residential living. Further effort is needed to prevent nuisance, by timing land use transitions from mining to other uses.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

Aggregate is a critical ingredient in making the “built environment.” A key factor in the cost of aggregate, and hence the cost of the built environment, is the transportation cost of this very heavy and bulky material. It is common to use the most suitable materials found closest to the site of development within the region determined by the transportation network and distribution of materials.

Lee County has large deposits of such materials. It is known, however, that the extraction of these materials have impacts on the natural system, involving the utter loss of all surficial habitat, and cause major changes to the water budget of the impact area. Also, mining is an uncomfortable neighbor for residential land uses.

The County has used its land use authority to reduce the nuisance effect of mining. The reverse is also being determined to be true—residential development occurring adjacent to active mining does generate concerns about impacts on the newly established residential areas, leading to demands for mining changes that were not required prior to the residential development.

Most mining is occurring or expected to occur in the headwaters of the County’s natural water courses or in the recharge areas of the surficial aquifer, the source of water for many agriculture and domestic self supplied users, as well as Lee County Utility. Further, the aggregate comes from another aquifer, also a source of water for utility, agriculture, and domestic self supplied users. Maintaining surficial and groundwater storage is critical for the rest of the County’s development and environmental management strategies. With proper precautions, mining can assist in furthering these strategies rather than being a deterrent.

The primary supporting document on mining and water resources is the Lee County Groundwater and Mining Study, and the recommended policies 10.3.1-10.3.5 are drawn from this report. The report was peer reviewed, and amendments to the report made in August 2006, but none of the peer issues on mining involved conflicts with the recommendations, which have been converted into the policies above.

Item 10.3.6 addresses a concern that reclamation plans for residential use should at a minimum be timed to prevent nuisance conflicts with mining on adjacent tracts.

B. CONCLUSIONS

The recommendations contained in the Groundwater Resource and Mining Study should be implemented in the Lee Plan. Additional protection for future residential development of mining sites should be implemented.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners move this proposed amendment to the next round of plan amendments.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: November 27, 2006

A. LOCAL PLANNING AGENCY REVIEW

The Local Planning Agency was scheduled to review this proposal at their November 27th Regular Meeting. One Local Planning Agency member raised several concerns. This member felt that meeting the new proposed requirements would require the disclosure of proprietary information. There was also a concern about the modeling requirements to comply with the travel times to wellfields. The meeting was about to lose a quorum and the Local Planning Agency approved a motion to recommend moving this amendment to the next round of plan amendments. Following this recommendation will delay this amendment to Local Planning Agency hearings in the spring of 2007 and Board transmittal hearing in the early summer of 2007.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION: The Local Planning Agency recommends that this proposed amendment be moved to the next round of plan amendments. Given the issues raised and the lack of sufficient answers to the questions raised, staff concurs with the motion to continue to the next round.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

NOEL ANDRESS	AYE
DEREK BURR	AYE
RONALD INGE	AYE
CARLETON RYFFEL	ABSENT
RAYMOND SCHUMANN, ESQ.	AYE
RAE ANN WESSEL	AYE
VACANT	

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRAIN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRIAN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN

CPA2005-49
UPDATE GOAL 10 NATURAL
RESOURCE EXTRACTION
BoCC SPONSORED
AMENDMENT
TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

BoCC Public Hearing Document
for the
October 22nd, 2008 Public Hearing

Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 479-8585

October 8, 2008

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2005-00049**

Text Amendment

Map Amendment

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

INITIAL STAFF REPORT PREPARATION DATE: November 15, 2006
 REVISED STAFF REPORT PREPARATION DATE: December 1, 2006

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
 REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

2. REQUEST:

Adopt a new Objective and Policies under Goal 10: Natural resource Extraction to address the further impacts of mining and the steps needed for adequate mitigation or prevention of adverse impacts. Further, recommendations are made to prevent future land use conflicts between mining and other uses in rural areas. More specifically, Goal 10, Natural Resource Extraction, will be expanded to include measures for rock mining, and for mitigation of rock mining impacts with adjacent land uses.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION:

Planning Staff recommends that the Board of County Commissioners transmit this proposed amendment to the Florida Department of Community Affairs for their review.

2. PROPOSED TRANSMITTAL LANGUAGE

PROPOSED NEW OBJECTIVE AND POLICIES UNDER ELEMENT II - FUTURW LAND USE, GOAL 10: NATURAL RESOURCE EXTRACTION

OBJECTIVE 10.3: Coordinate mining activities; evaluation, monitoring, restoration and redevelopment plans with water supply planning activities, surface water management, wetland protection, wildlife conservation and future residential activities.

POLICY 10.3.1. Mining applications will include design features and supporting data to maintain or enhance the predevelopment surface and groundwater levels, hydroperiods and flows for the appropriate watersheds and sub-basins.

POLICY 10.3.2. Mining applications will include baseline monitoring, onsite and regional assessments of the change in flow, timing of travel, and direction of surface and groundwater systems in the impacted area. Particular attention will be given to connectivity and the potential travel time to wellfields and concentrations of domestic self supplied users.

POLICY 10.3.3. Mining applications will include assessments of the potential impact on the aquatic ecology and water quality of the lakes resulting from lake design and post mining impacts including runoff or groundwater flow and likely land uses surrounding the site.

POLICY 10.3.4. The depth of mining for any excavation proposed will be limited to that necessary to prevent the breach of aquacludes or change in water quality within the aquaclude separating the aquifer the mining is within from any other aquifer. Other limitations on mining setbacks or depths will be determined on a case by case basis, tied to existing neighboring uses, and specific hydrogeologic, wetlands protection and wildlife conservation issues.

POLICY 10.3.5 Annual reports on mining will be required in any permit approval, which swill include a continuation of the staff recommended baseline monitoring, the areas under active mining, 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.

POLICY 10.3.6 Any significant adverse impacts identified during mining or post-mining will be subject to adaptive management and corrective measures.

POLICY 10.3.7. Any restoration activities required of a mining permit, and any proposed redevelopment of a mined site tied to a mining permit must consider the restoration and sustainable management of all lakes, preserves and buffer areas and the timing of development, including

mining, of surrounding sites. Residential uses when deemed appropriate, will be limited in the timing of their placement until surrounding mining operations cease creating groundwater or geological impacts affecting the foundations of structures

3. BASIS AND RECOMMENDED FINDINGS OF FACT:

The report *Lee County Groundwater Resource and Mining Study* was prepared under contract with a team of geologists. The draft report was dated June 2005 and amended in August 2006. The report evaluated, with the information available, the likely commercial rock deposits and the current mining operations. It identified the most likely location of future mining, with the application of a series of overlays indicating community and environmental constraints. The remaining areas were deemed to meet the county wide need for rock aggregate for the planning horizon. The report may be found in its entirety at:

http://www.lee-county.com/dcd1/Downloads/Documents/Studies_Reports/GroundwaterResource/GR&M.htm

The issue of mining and claims of nuisance on surrounding rural residential land has repeatedly come before the Board of County Commissioners. Additionally, various mining proposals include reclamation plans that involve some conversion to residential. When the mining activity on site or on adjacent parcels continues while the residential component is developed, additional conflict occurs. Ensuring a separation in time between the mining and subsequent residential activity will prevent or mitigate such conflict.

C. BACKGROUND INFORMATION

The Groundwater Resource and Mining report was recommended through the Smart Growth Committee. In addition, the 2004 Evaluation and Appraisal Report, as amended, indicated that the Report would be prepared to update information on the groundwater and mining resources of the County.

The report updates the information on rock of minable quality, based upon current commercial industry economics. It provides an assessment on current production, and a series of estimates of rock availability, with and without environmental constraints. It also provides an assessment of impacts on water resources by mining operations and by the creation of lakes in areas with lesser Evapotranspiration (E/T) characteristics. The report further evaluates the impact of mines on the topography and gradient of water flow.

The report provides recommendations that address the impacts of mining, and provides for remedies, in regard to water resources.

Previous plan amendments and land development regulations have attempted to mitigate between activities of mining and impacts on other land uses in proximity. The recent blasting ordinance serves as one such amendment. However, road noise and truck traffic, deterioration of road beds due to heavy vehicles, and temporary changes in water tables lead to concerns of traffic accidents, housing damage,

and other incidents for residential living. Further effort is needed to prevent nuisance, by timing land use transitions from mining to other uses.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

Aggregate is a critical ingredient in making the “built environment.” A key factor in the cost of aggregate, and hence the cost of the built environment, is the transportation cost of this very heavy and bulky material. It is common to use the most suitable materials found closest to the site of development within the region determined by the transportation network and distribution of materials.

Lee County has large deposits of such materials. It is known, however, that the extraction of these materials have impacts on the natural system, involving the utter loss of all surficial habitat, and cause major changes to the water budget of the impact area. Also, mining is an uncomfortable neighbor for residential land uses.

The County has used its land use authority to reduce the nuisance effect of mining. The reverse is also being determined to be true—residential development occurring adjacent to active mining does generate concerns about impacts on the newly established residential areas, leading to demands for mining changes that were not required prior to the residential development.

Most mining is occurring or expected to occur in the headwaters of the County’s natural water courses or in the recharge areas of the surficial aquifer, the source of water for many agriculture and domestic self supplied users, as well as Lee County Utility. Further, the aggregate comes from another aquifer, also a source of water for utility, agriculture, and domestic self supplied users. Maintaining surficial and groundwater storage is critical for the rest of the County’s development and environmental management strategies. With proper precautions, mining can assist in furthering these strategies rather than being a deterrent.

The primary supporting document on mining and water resources is the Lee County Groundwater and Mining Study, and the recommended policies 10.3.1-10.3.5 are drawn from this report. The report was peer reviewed, and amendments to the report made in August 2006, but none of the peer issues on mining involved conflicts with the recommendations, which have been converted into the policies above.

Item 10.3.6 addresses a concern that reclamation plans for residential use should at a minimum be timed to prevent nuisance conflicts with mining on adjacent tracts.

B. CONCLUSIONS

The recommendations contained in the Groundwater Resource and Mining Study should be implemented in the Lee Plan. Additional protection for future residential development of mining sites should be implemented.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit this proposed amendment to the Florida Department of Community Affairs for their review.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: November 27, 2006

A. LOCAL PLANNING AGENCY REVIEW

The Local Planning Agency was scheduled to review this proposal at their November 27th Regular Meeting. One Local Planning Agency member raised several concerns. This member felt that meeting the new proposed requirements would require the disclosure of proprietary information. There was also a concern about the modeling requirements to comply with the travel times to wellfields. The meeting was about to lose a quorum and the Local Planning Agency approved a motion to recommend moving this amendment to the next round of plan amendments. Following this recommendation will delay this amendment to Local Planning Agency hearings in the spring of 2007 and Board transmittal hearing in the early summer of 2007.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION: The Local Planning Agency recommends that this proposed amendment be moved to the next round of plan amendments. Given the issues raised and the lack of sufficient answers to the questions raised, staff concurs with the motion to continue to the next round.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

NOEL ANDRESS	AYE
DEREK BURR	AYE
RONALD INGE	AYE
CARLETON RYFFEL	ABSENT
RAYMOND SCHUMANN, ESQ.	AYE
RAE ANN WESSEL	AYE
VACANT	

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: December 13, 2006

A. BOARD REVIEW: Staff recommended that the amendment be put in to the next cycle to allow for more time to address issues regarding the amendment. A member of the public then suggested a moratorium be put on any new mine applications until the amendment is reconsidered. The member of the public further requested that the planners and the Commission consider a more extensive definition of the word "adjacent" and to also develop a definition for the differences between water bodies.

A Staff member then asked for clarification about processing already-filed mining cases. A Board member answered that staff should bring it up at M and P.

A Staff member then requested a motion to hold an adoption hearing for the amendment in the spring of 2007. The motion was approved.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY: A Staff member requested a motion be made to defer the amendment to the next amendment cycle.

1. **BOARD ACTION:** The Board voted to continue the case to the next regular amendment cycle.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The motion was approved to allow Staff more time to study the amendment.

C. VOTE:

BRAIN BIGELOW

AYE

TAMMARA HALL

AYE

BOB JANES

AYE

RAY JUDAH

AYE

FRANK MANN

AYE

PART V - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: December 17, 2007

A. LOCAL PLANNING AGENCY REVIEW

Planning staff provided an update to the LPA. The amendment was continued by the County Commissioners from the last year's amendment cycle. Staff relayed to the LPA that one of the DRGR Study sub-consultants had reviewed the proposed amendment and had offered comments. Concerning Policy 10.3.1, the sub-consultant believes that the County should be looking at historic flow levels in the basins. Concerning Policy 10.3.2, the sub-consultant believes that the County should look to further define the phrase "connectivity", and what means, is it wildlife connectivity, hydrology, or both.

The Smart Growth Director provided discussion concerning the events that lead to the proposed amendment. He stated that it came about 4 years ago when the topic came up. It came out of the Smart Growth Committee and it went to the Board of County Commissioners who asked for a review of the groundwater resources of the county. He provided that the amendment is now one point of a 14-point effort that's addressing the Density Reduction/Groundwater Resource area.

One LPA member asked about contaminant migration rates through mine pits and open water bodies into water resources, and the effect that mining pits and open water bodies have on potable water body resources being addressed by the proposed amendment. The Smart Growth Director replied that Policy 10.3.2 in part addresses these issues, but that the LPA could recommend additional modifications if it chose to do so. One LPA member asked, concerning Policy 10.3.6, if post mining had a specific time period such as six months or a year. The Smart Growth Director responded that without a time line, it would be eternal.

One member asked who would define what connectivity meant, whether it had a geological or hydrological meaning. The Smart Growth Director provided that it becomes a term of art based on how it is applied. He stated that a definition could be added to the plan's glossary. A member asked why the term "future" was in Objective 10.3. The Smart Growth Director stated that it is because future residential uses are sources of future conflict with mining activities. The member asked if there are policies dealing with existing residential uses and the Smart Director stated that there are. The member stated that the term "future" could be removed.

Another member asked how Policy 10.3.4 would be enforced. The Smart Growth Director stated that more frequent testing might be needed to determine the location of the aquaclude in relation to future mining as well as tighter land development regulations in areas where the location of the aquaclude is debated. Another member stated that such information is already required.

The LPA then called for public input. A member of the public then addressed the LPA and read a letter into the record from Peggy Schmidt. The letter urged that Objective 10.3 be modified by adding that regional impacts and cumulative direct and indirect impacts be considered. The letter provided that "frequently mining activity can cause subsidence in adjacent lands that can cause flooding, that can impact trees." The letter suggests adding the term "and surrounding properties" at the end of Policy 10.3.1. For

Policy 10.3.2 it was suggested to insert the term “adjacent lands.” The letter objected to the use of the word “lake” in Policy 10.3.3 as lakes are natural rather than reservoirs which are man-made. The letter recommended using “quarry pits” instead. The same recommendation was made for Policy 10.3.7. For Policy 10.3.4 it was suggested that in the second to the last line inserting after, “tied to existing neighboring uses,” the term “mining materials,” transport routes to provide for consideration of the trucks and so on that are used to carry the mined material away from the site. For Policy 10.3.4 the letter seeks to add language specifying how far a mine has to be from any residence, and suggest that a distance of 1.25 miles is appropriate.

A local land use attorney next addressed the LPA. He stated that he was appearing on the behalf of two clients to object to the proposed amendment and in order to preserve their standing in this matter. He stated that the amendment may be counterproductive and that it is premature. He explained that it is counterproductive in that it might lead to state preemption. He did not understand why the amendment was limited to just mining and did not address other forms of excavation such as cattle ponds or lake features in golf courses. It was premature in light of the Board sponsored study of the DR/GR. The amendment also had, in his opinion, Bert Harris issues that would result in litigation. He recommend that any amendment contain a Bert Harris defense strategy.

One LPA member asked the attorney if water flows and connectivity are already reviewed at the federal and state levels. The attorney stated that if they are, the County is not liable for it. If the County does start to review based on those issues there will be potential liability. He stated that he did not believe that state and federal regulations do not go to the level of restoration that the County is proposing. The restoration would result in significant changes to existing flow patterns. The LPA member stated that that was not necessarily the intent of the policies but the attorney stated that it was only a short trip from addressing historic flows to implementing regulations. The member asked if these criteria were already being reviewed at state and federal levels and the attorney stated that it is a different review at that level. If the County were comfortable with that review, this proposed language would not be needed. If this language is adopted, the Land Development Code will be changed to implement the policies.

Another LPA member asked what exactly the term “predevelopment” meant in the proposed language. The attorney stated that the issue is still being debated. Another member asked if this set of policy changes should wait until after the DRGR study is completed and the attorney said yes.

The chairman then brought the issue back to the LPA for discussion. One LPA member asked staff that in view of the recent mining moratorium wasn't it premature to make a decision on this subject at that time. The Director of Planning responded that the amendment had already been delayed from the previous round of amendments and have not been instructed by the Board to postpone it to the next round. If the Board determines that it is still premature, it will make a decision based on that. Further, the DRGR study is one point of the 14-point action plan and the other 13 points are not being put on hold until it is done. There is a possibility of preemption by the State and this is an opportunity to get some of these policies into the Lee Plan before State legislation takes effect. An LPA member asked if policies adopted into the Lee Plan before State legislation becomes effective would stay on the books. The Director of Planning stated that State regulations could be made retroactive. It depends on the State. The Smart Growth Director stated that the proposed policies might be used to push State preemption.

One LPA member stated that based on the confusion surrounding the subject and the still incomplete DRGR study, that it is still premature to transmit to the State. He moved to table the amendment until after the DRGR study was complete. Another LPA member asked if it were tabled, would it be able to be reviewed in 3 or 6 months. Staff stated that it would have to wait until the next round. The LPA then discussed the Bert Harris implications of the amendment and debated whether or not to recommend transmittal. The motion was voted on and failed. Another member moved that the LPA recommend Transmittal with changes to the policies. After further discussion, the vote was taken and the motion passed.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The LPA recommends that the amendment be tabled until the next LPA meeting and that Staff incorporate the changes that were discussed.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA determined that the amendment need further revision.

C. VOTE:

NOEL ANDRESS	AYE
DEREK BURR	NAY
RONALD INGE	AYE
CARLETON RYFFEL	ABSTAIN
LES COCHRAN	AYE
LELAND M. TAYLOR	AYE
RAE ANN WESSEL	AYE

D. SUBSEQUENT REVIEW:

Staff revised the staff report in accordance with the discussion at the December 17, 2007 LPA meeting. Two members of the public commented on the draft. One LPA member asked staff's response to the public comments. Staff stated that it supports the language as written as it has been through the LPA several times and has been subject to public review. Staff stated that they still recommend moving forward. The member asked the Assistant County Attorney if they had any reservations and they responded that they did not. Another member stated that some further clarification is still needed. After

further discussion one member moved that the proposed amendment be transmitted to the state. The motion passed 5-0 with one abstention.

E. VOTE:

NOEL ANDRESS	AYE
VACANT POSITION	ABSENT
RONALD INGE	AYE
CARLETON RYFFEL	ABSTAIN
LES COCHRAN	AYE
LELAND M. TAYLOR	AYE
RAE ANN WESSEL	AYE

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: October 22, 2008

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

A. BRAIN BIGELOW

TAMMARA HALL

ROBERT P. JANES

RAY JUDAH

FRANKLIN B. MANN

**PART VII - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

**PART VIII - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

A. BRIAN BIGELOW

TAMMARA HALL

ROBERT P. JANES

RAY JUDAH

FRANKLIN B. MANN

**CPA2005-49
UPDATE GOAL 10 NATURAL
RESOURCE EXTRACTION
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

LPA Public Hearing Document
February 25th, 2008 Public Hearing

*Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 479-8585*

February 18, 2008

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2005-00049**

Text Amendment **Map Amendment**

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

INITIAL STAFF REPORT PREPARATION DATE: November 15, 2006
 REVISED STAFF REPORT PREPARATION DATE: December 1, 2006

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
 REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

2. REQUEST:

Adopt a new Objective and Policies under Goal 10: Natural resource Extraction to address the further impacts of mining and the steps needed for adequate mitigation or prevention of adverse impacts. Further, recommendations are made to prevent future land use conflicts between mining and other uses in rural areas. More specifically, Goal 10, natural Resource Extraction, will be expanded to include measures for rock mining, and for mitigation of rock mining impacts with adjacent land uses.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION:

Planning Staff recommends that the Board of County Commissioners transmit this proposed amendment to the Florida Department of Community Affairs for their review.

2. PROPOSED TRANSMITTAL LANGUAGE

PROPOSED NEW OBJECTIVE AND POLICIES UNDER ELEMENT II – FUTURE LAND USE, GOAL 10: NATURAL RESOURCE EXTRACTION

OBJECTIVE 10.3: Coordinate mining activities; evaluation, monitoring, restoration and redevelopment plans with water supply planning activities, surface water management, wetland protection, wildlife conservation and future and existing residential activities and review the regional and cumulative impacts.

POLICY 10.3.1. Mining applications will include design features and supporting data to maintain or enhance the predevelopment surface and groundwater levels, hydroperiods and flows for the appropriate watersheds and sub-basins and surrounding properties.

POLICY 10.3.2. Mining applications will include baseline monitoring, onsite and regional assessments of the change in flow, timing of travel, and direction of surface and groundwater systems in the impacted area. Particular attention will be given to connectivity and the potential travel time to wellfields and concentrations of domestic self supplied users and protection for single residential wells.

POLICY 10.3.3. Mining applications will include assessments of the potential impact on the aquatic ecology and water quality of the quarry pits resulting from quarry pit design and post mining impacts including runoff or groundwater flow and likely land uses surrounding the site and consideration of the primary and secondary impacts.

POLICY 10.3.4. The depth of mining for any excavation proposed will be limited to that necessary to prevent the breach of aquacludes or change in water quality within the aquaclude separating the aquifer the mining is within from any other aquifer. Other limitations on mining setbacks or depths will be determined on a case by case basis, tied to existing neighboring uses, and specific hydrogeologic, wetlands protection and wildlife conservation issues, and also consideration of the transportation routes and the impacts that will have on those routes.

POLICY 10.3.5 Annual reports on mining will be required in any permit approval, which will include a continuation of the staff recommended baseline monitoring, the areas under active mining, 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.

POLICY 10.3.6 Any significant adverse mining impacts identified during mining or post-mining will be subject to adaptive management and corrective measures.

POLICY 10.3.7. Any restoration activities required of a mining permit, and any proposed redevelopment of a mined site tied to a mining permit must consider the restoration and sustainable management of all quarry pits', preserves and buffer areas and the timing of development, including mining, of surrounding sites. Residential uses when deemed appropriate, will be limited in the timing of their placement until surrounding mining operations cease creating groundwater or geological impacts affecting the foundations of structures

3. BASIS AND RECOMMENDED FINDINGS OF FACT:

The report *Lee County Groundwater Resource and Mining Study* was prepared under contract with a team of geologists. The draft report was dated June 2005 and amended in August 2006. The report evaluated, with the information available, the likely commercial rock deposits and the current mining operations. It identified the most likely location of future mining, with the application of a series of overlays indicating community and environmental constraints. The remaining areas were deemed to meet the county wide need for rock aggregate for the planning horizon. The report may be found in its entirety at:

http://www.lee-county.com/dcd1/Downloads/Documents/Studies_Reports/GroundwaterResource/GR&M.htm

The issue of mining and claims of nuisance on surrounding rural residential land has repeatedly come before the Board of County Commissioners. Additionally, various mining proposals include reclamation plans that involve some conversion to residential. When the mining activity on site or on adjacent parcels continues while the residential component is developed, additional conflict occurs. Ensuring a separation in time between the mining and subsequent residential activity will prevent or mitigate such conflict.

C. BACKGROUND INFORMATION

The Groundwater Resource and Mining report was recommended through the Smart Growth Committee. In addition, the 2004 Evaluation and Appraisal Report, as amended, indicated that the Report would be prepared to update information on the groundwater and mining resources of the County.

The report updates the information on rock of minable quality, based upon current commercial industry economics. It provides an assessment on current production, and a series of estimates of rock availability, with and without environmental constraints. It also provides an assessment of impacts on water resources by mining operations and by the creation of lakes in areas with lesser Evapotranspiration (E/T) characteristics. The report further evaluates the impact of mines on the topography and gradient of water flow.

The report provides recommendations that address the impacts of mining, and provides for remedies, in regard to water resources.

Previous plan amendments and land development regulations have attempted to mitigate between activities of mining and impacts on other land uses in proximity. The recent blasting ordinance serves

as one such amendment. However, road noise and truck traffic, deterioration of road beds due to heavy vehicles, and temporary changes in water tables lead to concerns of traffic accidents, housing damage, and other incidents for residential living. Further effort is needed to prevent nuisance, by timing land use transitions from mining to other uses.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

Aggregate is a critical ingredient in making the “built environment.” A key factor in the cost of aggregate, and hence the cost of the built environment, is the transportation cost of this very heavy and bulky material. It is common to use the most suitable materials found closest to the site of development within the region determined by the transportation network and distribution of materials.

Lee County has large deposits of such materials. It is known, however, that the extraction of these materials have impacts on the natural system, involving the utter loss of all surficial habitat, and cause major changes to the water budget of the impact area. Also, mining is an uncomfortable neighbor for residential land uses.

The County has used its land use authority to reduce the nuisance effect of mining. The reverse is also being determined to be true—residential development occurring adjacent to active mining does generate concerns about impacts on the newly established residential areas, leading to demands for mining changes that were not required prior to the residential development.

Most mining is occurring or expected to occur in the headwaters of the County’s natural water courses or in the recharge areas of the surficial aquifer, the source of water for many agriculture and domestic self supplied users, as well as Lee County Utility. Further, the aggregate comes from another aquifer, also a source of water for utility, agriculture, and domestic self supplied users. Maintaining surficial and groundwater storage is critical for the rest of the County’s development and environmental management strategies. With proper precautions, mining can assist in furthering these strategies rather than being a deterrent.

The primary supporting document on mining and water resources is the Lee County Groundwater and Mining Study, and the recommended policies 10.3.1-10.3.5 are drawn from this report. The report was peer reviewed, and amendments to the report made in August 2006, but none of the peer issues on mining involved conflicts with the recommendations, which have been converted into the policies above.

Item 10.3.6 addresses a concern that reclamation plans for residential use should at a minimum be timed to prevent nuisance conflicts with mining on adjacent tracts.

B. CONCLUSIONS

The recommendations contained in the Groundwater Resource and Mining Study should be implemented in the Lee Plan. Additional protection for future residential development of mining sites should be implemented.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit this proposed amendment to the Florida Department of Community Affairs for their review.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: November 27, 2006

A. LOCAL PLANNING AGENCY REVIEW

The Local Planning Agency was scheduled to review this proposal at their November 27th Regular Meeting. One Local Planning Agency member raised several concerns. This member felt that meeting the new proposed requirements would require the disclosure of proprietary information. There was also a concern about the modeling requirements to comply with the travel times to wellfields. The meeting was about to lose a quorum and the Local Planning Agency approved a motion to recommend moving this amendment to the next round of plan amendments. Following this recommendation will delay this amendment to Local Planning Agency hearings in the spring of 2007 and Board transmittal hearing in the early summer of 2007.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The Local Planning Agency recommends that this proposed amendment be moved to the next round of plan amendments. Given the issues raised and the lack of sufficient answers to the questions raised, staff concurs with the motion to continue to the next round.

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

C. VOTE:

NOEL ANDRESS	<u>AYE</u>
DEREK BURR	<u>AYE</u>
RONALD INGE	<u>AYE</u>
CARLETON RYFFEL	<u>ABSENT</u>
RAYMOND SCHUMANN, ESQ.	<u>AYE</u>
RAE ANN WESSEL	<u>AYE</u>
VACANT	<u> </u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: December 13, 2006

A. BOARD REVIEW: Staff recommended that the amendment be put in to the next cycle to allow for more time to address issues regarding the amendment. A member of the public then suggested a moratorium be put on any new mine applications until the amendment is reconsidered. The member of the public further requested that the planners and the Commission consider a more extensive definition of the word "adjacent" and to also develop a definition for the differences between water bodies.

A Staff member then asked for clarification about processing already-filed mining cases. A Board member answered that staff should bring it up at M and P.

A Staff member then requested a motion to hold an adoption hearing for the amendment in the spring of 2007. The motion was approved.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY: A Staff member requested a motion be made to defer the amendment to the next amendment cycle.

1. **BOARD ACTION:** The Board voted to continue the case to the next regular amendment cycle.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The motion was approved to allow Staff more time to study the amendment.

C. VOTE:

BRAIN BIGELOW

AYE

TAMMARA HALL

AYE

BOB JANES

AYE

RAY JUDAH

AYE

FRANK MANN

AYE

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

DATE OF PUBLIC HEARING: December 17, 2007

A. LOCAL PLANNING AGENCY REVIEW

At the initiation of the discussion of this item, Mr Ryffel indicated he would abstain from voting, that he had provided the appropriate papers to staff, but would participate in the discussion. Staff presented the proposed series of amendments, noting the item is a holdover from the previous round of amendments. Questions from the LPA were provided and answered. Under public comment, two persons spoke, Ellie Boyd of the Responsible Growth Management Coalition, and Michael Ciccicone, representing two separate entities, Gulf Rock Mine and Schwab Materials Mine. Mrs Boyd provided an number of text changes to specific policies. Mr Ciccicone provided a synopsis of legislative discussions regarding potential preemption of mining from local review, and on the implications of regulatory takings under the Bert Harris Act. Also noted was the moratorium recently enacted by the Board of County Commission on Future Land Use Map changes and on zoning. Questions were provided to the speakers by the LPA, and answered. Following the public comment, the LPA began deliberations. One point of interest was the relationship of the Plan amendment to the 14 points that the DRGR study and plan is to address during the moratorium. Also questioned was the potential preemption of the County's ability to regulate mining, should the Legislature so act. Finally, the concern over Bert Harris was discussed.

A motion was made to delay action on the Plan amendment pending the results of the DRGR study. Motion failed, 4-2, with one abstention. A motion was then made to approve the plan amendment, with a series of amendments.

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT
SUMMARY**

1. RECOMMENDATION: The motion was made to transmit the amendment with the following series of amendments:

Objective 10.3: include the words "future and existing residential activities and review the regional and cumulative impacts."

Policy 10.3.1 add the words after subbasin "and surrounding properties."

Policy 10.3.2 add the words "and protection for single residential wells."

Policy 10.3.3 change the word "lakes" to "quarry pits," and add the words "after consideration of the primary and secondary impacts."

Policy 10.3.5 add the words "and also consideration of the transportation routes and the impacts that will have on those routes."

Policy 10.3.5 change "swill" to "will" and change "futuraW" to "futuraE."

Policy 10.3.6 add the word "mining" after the word "adverse."

Policy 10.3.7. change the word "lakes" to "quarry pits"

To definition section, add a definition of “connectivity.”

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

With the language changes, the LPA found that the proposed amendments should be forwarded to the Board of County Commissioners with a recommendation that it be transmitted to DCA for review.

C. VOTE:

NOEL ANDRESS	Aye
DEREK BURR	Aye
RONALD INGE	Nay
CARLETON RYFFEL	Abstain
LES COCHRAN	Aye
LELAND M. TAYLOR	Nay
RAE ANN WESSEL	Aye

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRAIN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN

**PART VII - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

**PART VIII - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRIAN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN
