



Stuart and Associates Planning & Design Services

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December 11, 2018

To: LPA Members Frank Feeney, Justin Thibaut, Dennis Church, Kristine Smale, James Ink, Stan Stoder, Henry Zuba

From: Greg Stuart, MUP

Re: The Lee County DR/GR Lime Rock Mining Comprehensive Plan Amendment _ CPA2018-00014

CC: Mikki Rozdolski; Matt Uhle

Dear LPA Members:

The intent of this memo is to provide you with a detailed brief regarding the background and substance of the Lime Rock Mining CPA2018-00014 amendment. I am doing so in that it is impossible to cover the topics needed within a three to five minute window. Succinctly, CPA2018-00014 represents the culmination of the Lee County Administration's multi-year attempt at subverting legitimate comprehensive planning and zoning processes by actively supporting the Troyer Bros. lime rock mine application, at the expense of various legal and ethical obligations to support the public interest and comply with the Lee Plan and Florida's Growth Management Act. If successful, the County Administration's distortion of processes and catering to special interests will lead to multi-generation water quality, environmental and economic impacts across all important sectors of our local economy, including the real estate and development, agriculture and the tourism and hospitality industries.

I represent Sakata Seed Company of North America, a multi-national agricultural research and development corporation with offices world wide. Sakata Seed is in opposition to the Troyer Bros. Lime Rock Map 14 Amendment (and zoning), which has been previously been transmitted but, as of this date, has not been adopted. The basis of the Troyer Bros. Map 14 Amendment amendment and transmittal was the 2016 Waldrop Report. CPA2018-00014 in effect is an "end-run" around legitimate Lee Plan rules, practices and principals and thoroughly opens the door for this and all future lime DR/GR rock mines.

The subject CPA2018-00014 objectives and policies that are being deleted/amended are identified on the following pages.

1. Objective 10.1

Designate **through the rezoning process sufficient lands** suitable for providing fill material, limerock, and other commercially valuable natural resources to meet the county's needs and to export to other communities, while providing adequate protection for the county's other natural resources. (Ordinance No. 10-20)

2. DR/GR Policy 1.4.5.2.c

c. The Future Limerock Mining overlay (Map 14) identifies sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through the Lee Plan's planning horizon (currently 2030). See Objective 33.1 and following policies.

3. Planning Communities Map and Acreage Allocation Table Policy 1.7.6.2

2. Project reviews for development orders must include a review of the capacity, in acres, that will be consumed by buildout of the development order. **No development order, or extension of a development order, will be issued or approved if the project acreage, when added to the acreage contained in the updated existing land use database, exceeds the limitation established by Table 1(b),** Acreage Allocation Table regardless of other project approvals in that Planning Community. For limerock mining in Planning Community #18, see special requirements in Policy 33.1.4 regarding industrial acreages in Table 1(b).

4. The Future Limerock Mining Overlay Map 14 Policy 1.7.12

Future Limerock Mining overlay (Map 14) identifies sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through the Lee Plan's planning horizon (currently 2030). See Objective 33.1 and following policies. (Ordinance No. 10-20, 14-10)

5. Map 1 Policy 2.2.2.3 _

During the rezoning process the BOCC Will Evaluate The Use Based On "Whether a given proposal would result in unreasonable development expectations that may not be achievable because of acreage limitations contained in the Acreage

Allocation Table (see Policy 1.7.6, Map 16 and Table 1(b)). Additional provisions related to mining are provided in Policy 33.1.4.”

7. Policy 33.1.1:

Limerock mining is a high-disturbance activity whose effects on the surrounding area cannot be completely mitigated. To minimize the impacts of mining on valuable water resources, natural systems, residential areas, and the road system, Map 14 identifies Future Limerock Mining areas **that will concentrate limerock mining activity in the traditional Alico Road industrial corridor** east of I-75. By formally identifying such areas in this plan and allowing rezonings for new and expanded limerock mines only in the areas identified in Map 14, limerock resources in or near existing disturbed areas will be more fully utilized and **the spread of limerock mining impacts into less disturbed environments will be precluded until such time as there is a clear necessity to do so (and Map 14 is amended accordingly)**. Inclusion of land on Map 14 does not restrict the rights of landowners to use their land for other allowable purposes. (Ordinance No. 10-20)

8. Policy 33.1.4.1:

33.1.4: Table 1(b) contains industrial acreage in Southeast Lee County that reflects the acreage of limerock mining pits needed to meet local and regional demand through the year 2030.

1. In accordance with Policies 1.1.1 and 1.7.6, **new mine development orders and mine development order amendments may be issued provided that the industrial acreage totals in Table 1(b) are not exceeded**. For purposes of this computation, the proposed additional limerock pit acreage, when added to the acreage of limerock pits already dug, cannot exceed the acreage limitation established in Table 1(b) for Planning Community #18.

The general background and time line for CPA 2018-00014 s as follows.

Early 2000’s and the 2010 Lee Plan Amendments:

In the early 2000’s the public was deeply concerned about unrestricted lime rock mining in the DR/GR and in the headwaters of the Estero River and Flint Pen Strand. Given the many unknowns relating to surface water impacts, potable ground water impacts, down stream water pollution and estuary impacts, truck traffic road impacts, compatibility and a number of other significant issues, in June of 2007 the BOCC authorized the Dover Kohl DR/GR study. This was followed by enacting a DR/GR development moratorium in 12/2007. In

the years 2008 through 2010 the Dover Kohl Reports was submitted, reviewed and ultimately formed the basis of the 2010 Lee Plan Amendments. The amendments were litigated by private sector interests but were upheld by circuit court. In general, well over \$1.3MM in public expenditures and 1,000's of hours of Lee Co. citizen input and participation went into this effort. The 2010 Amendments included the Lime Rock Map 14 and the identified eight objectives and policies that the County Administration is attempting to delete.

2015/2016 Waldrop Report:

The 2015/16 Waldrop Engineering was selected by the County Administration to prepare a lime rock mine supply and demand report pursuant the afore mentioned objectives and policies. It is my understanding that Waldrop Engineering was not awarded the contract through an RFP or RFQ process, but was handpicked by the Administration. The Waldrop lime rock supply and demand report was prepared in September 2016. From my observation, the County's Department of Community Development did not exercise any meaningful direction and management of the 2015/16 Lime Rock Mine Report project. Specifically, the Department of Community Development did not provide any direction pertaining to the selection of methodology and data. No draft of Waldrop was circulated for any type of comprehensive inter-departmental review; it appears that Waldrop was accepted as-is. The chief analytical method utilized was air-photo interpretation. Lime rock mine depth was based on regional averages. Including a limited number of Collier Co. mines, the Waldrop Report identified 297.9MM cubic yards of lime rock in 2015, enough to provide the seven-county region with lime rock through 2037.

The LPA recommended that the BOCC not accept the Waldrop Report. The BOCC accepted the Waldrop Report. Finally, the Waldrop Report was not reviewed nor adopted through the comprehensive plan amendment process; it is not a part of the Lee Plan. It is merely data and analysis that can be superseded at any time by better data and analysis consistent with FSS 163.3177(f).

2017 Stuart and Associates Evaluation and Update:

In 2017 Sakata Seed engaged Stuart and Associates to review and provide an update to the Waldrop Report. This was consistent with FSS 163.3177(f), in providing an update by providing for more accurate data. In no case did the 2018 Update change any aspect of Waldrop's methodology or assumptions. The only thing the 2018 Update did was to use accurate data derived from Lee Co. monitoring reports, Lee Co. mine specific geotechnical information and a complete Collier, Charlotte and Lee Co. mine inventory (derived from Florida Department of Environmental Protection).

The key 2018 Stuart Update finding was that Waldrop significantly underreported the amount of lime rock available to serve the seven county region. In 2015, there was 526.6MM cubic yards of lime rock, enough to last through the year 2051. Hence, new lime rock mines are not needed till 2051. The key errors in the Waldrop Report were that they utilized 14 mines rather than the 23 Lee, Collier and Charlotte Co. mines, that by ignoring official regulatory monitoring reports for future estimates Waldrop undercounted over 100MM cubic yards of lime rock, and that the use average regional lime rock resource depth of 25 to 30 feet was wrong; that the actual rock resource depth is 45 to 90 feet.

October 2017 Outreach Attempt To DCD:

In October 2017 I reached out to the Department of Community Development in an attempt to brief them on my preliminary findings and to ask some pertinent questions. These questions included why DCD did not instruct Waldrop to use official Lee Co. monitoring reports rather than less accurate air photo interpretation. Other questions were why DCD did not instruct Waldrop to use actual mine geotechnical data and soil profiles rather than less accurate regional averages. On 31 October 2017, David Loveland transmitted to me an email that stated "*We will not be responding to your questions*". I can provide the email.

Summer 2018 Troyer Bros. Mine Rezoning & Outreach Attempt to DCD:

In the Summer of 2018 my firm participated in the Troyer Bros. MEPD zoning case, in opposition to the mine. When attempting to discuss various provision of the Lee Plan, including the eight afore referenced objectives and policies that are now being proposed to be deleted, the Hearing Examiner, partly at the request of the CAO, excluded the 2018 Update and all related testimony on supply and demand from her record because it was relevant only to the plan amendment, over which she has no authority. Following the hearings on 9 August I requested a meeting with Mikki Rozdolski to discuss my findings. On August 21, she informed me that at the instruction of the County Attorneys office, she could not meet with me. The two reasons given were that the BOCC accepted the Waldrop Report (again note the legal difference between an accepted report and an "adopted" report as part of the comprehensive plan). The other reason was that my client may litigate against Lee County at some time in the future. Again, I can provide the email.

Aug./Sept 2018 Outreach Attempt To BOCC:

In late August and September of this year, I reached out to the BOCC to brief them on the 2018 Update. Since both the CAO and the Hearing Examiner agreed that the 2018 Update is not intertwined with the zoning case, there is no legal reason to prohibit BOCC members from discussing the update, particularly in light of the mandate in Chapter 163 to maximize public participation and that all elements of the plan shall be based on

relevant and appropriate data and analysis. Yet at the direction of the County Attorneys Office, the BOCC refused my request for a meeting to brief staff so as to set up some type of forum for evaluation and discussion. It is important to note that there is no legal basis for the County Attorneys office instructing staff to not meet with me and directing our elected officials to not meet with me regarding a map amendment. From my 33 years of experience this action is unprecedented! While prohibiting professional expert planning communications with staff, the County Attorney has also prevented the BOCC from having more accurate data and analysis for decision making. Finally during this period I did drop off the 2018 Update to the BOCC officials. From that drop off the COA's office has had the 2018 Update. I am attaching a copy of the 2018 Update that includes all technical appendix with the exception the Charlotte County (due to file size limitations). The appendix contains relevant soil profiles, geotechnical reports, monitoring reports and FDEP permits.

In September of 2018 at the request of John Manning, a meeting was scheduled with Richard Wesch to discuss the 2018 Update. The meeting was subsequently canceled by the County Attorney. The County Attorney stated that no discussions or considerations will be allowed.

Observations:

1. By prohibiting any and all outside professional evaluation of the Waldrop Report, the County Administrator and the County Attorney have violated both the spirit and substance of Florida's Growth Management Act, which specifies an inclusive public process based on appropriate data and analysis (FSS 163.3177(f)). Again, there is no legal basis for the County Attorney to prohibit staff and BOCC from meeting with me to discuss the 2018 Update. This is an administrative, comprehensive plan issue, not a quasi-judicial issue. This prohibition is preventing the BOCC from having more accurate data and analysis for their decision making. This fact opens questions as to what extent have special interests permeated the upper levels of Lee County government, and to what extent does Lee County actually take into account the public interests.
2. For well over a year, the County Administration has attempted to prevent accurate data and analysis to be used for new lime rock mine decision making. This fact demonstrates that the County Administration has and is subverting legitimate comprehensive planning and zoning processes by actively supporting the Troyer Bros. lime rock mine application, at the expense of various legal and ethical obligations to

support the public interest by following a legally adopted comprehensive plan and accepted administrative processes.

3. It is my opinion that, given this September's opportunity to actually review the 2018 Update, the COA and DCD has come to the realization that new DR/GR lime rock mines cannot be justified since there is enough lime rock to last through 2051. Their response to this awkward truth is CPA2018-00014, which presents the complete gutting all meaningful Lee Plan provisions and restrictions relating to DR/GR lime rock mining. I am certain that the COA and DCD will deny it, but it is no coincidence that less than 3 months from having the opportunity of reviewing the 2018 Update, out of the blue comes one of the most significant Lee Plan amendments that I have seen in over 25 years. Knowing that the new mines cannot meet the supply and demand, and other Lee Plan rules and regulations, the County Administration is attempting to eliminate the very same rules.
4. After 1,000's of hours of Lee Co. citizen input and 8 years on the books, Lee County has cooked up a very flimsy basis to revise the law in a manner that supports special interests and not the public. Again, it is no coincidence that CPA2018-00014 is being put forth by the County Administration now that the Waldrop Report's significant errors and omissions have been professionally documented. The County Administration cannot justify new mines based on the current law, so their response is to change the law. This is clear evidence of the Administration subverting legitimate comprehensive planning and zoning processes in their active support of the Troyer Bros. lime rock mine application.
5. When cutting through all the staff double speak, what they are arguing is that having subjective, non-quantifiable criteria with no specific locational criteria (e.g., Alico Road as the preferred area), is far superior to having a quantifiable, scientifically based decision making criteria with specific locational standards. This stands professionally accepted planning principles and practices on its head. Who is the true beneficiary of CPA2018-00014?
6. The proposed weakening of DR/GR lime rock mine rules and policies is not in the public interest. By allowing mining in the headwaters of the Flint Pen Strand and the Estero River, downstream water quality problems will only be aggravated. This will further hurt our tourist and hospitality industry. Lehigh Acres and Estero will see various impacts to their communities, with impacts to the real estate and development sector. A viable agricultural sector will be further diminished. All for a mineral product that is plentiful supply for the next 31 years.

Recommendations:

1. Recommend to the BOCC to either not go forward with such an ill-conceived proposal, or, before any transmittal, to have real public workshops to ascertain the costs and benefits of this proposal.
2. Ask Staff - why now and not during the normal Evaluation and Appraisal process?
3. Ask Staff - who specifically directed DCD to come up with CPA2018-00014 and when was that directive given?
4. Ask Staff - provide specific documentation as to the date and people complaining of problem(s) that generated the proposed Lee Plan Amendment (if it is not broke, do not fix it).
5. Ask Staff - provide specific examples of a subjective, non-scientific decision making approach that has proven to be superior to a quantitative process inclusive of a higher degree of geographic specificity.

Sincerely

Greg Stuart, MUP
gs/project/17020/doc/stuartLPAmemo
Attachment