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April 19, 2019

Via E-Mail

Ray Eubanks, Plan Processing Administrator
State Land Planning Agency
Caldwell Building
107 East Madison – MSC 160
Tallahassee, FL 32399-0800

**Re: Amendment to the Lee Plan
Transmittal Submission Package
CPA2018-10014 Goal 33/Limerock Mining**

Dear Mr. Eubanks:

In accordance with the provisions of F.S. Chapter 163, please find attached the proposed Comprehensive Plan Amendment, known locally as CPA2018-10014 (Goal 33/Limerock Mining). The proposed amendment is being submitted through the expedited state review process as described in Chapter 163.3184. The amendment is as follows:

CPA2018-10014: Amend the Comprehensive Plan (Lee Plan) Goals 1, 9, 10, 33, and 114, Chapter XIII, Table 1(b), and Map 14 to remove: the requirement for a limerock supply inventory and demand analysis; the requirement for future limerock mines to be designated on Map 14; and, delete Map 14, the Future Limerock Mining Overlay.

The Local Planning Agency held a public hearing for this plan amendment on December 17, 2018 and January 28, 2019. The Board of County Commissioners voted to transmit the amendment on April 17, 2019. The proposed amendment is not applicable to an area of critical state concern. The Board of County Commissioners stated their intent to hold an adoption hearing following the receipt of the review agencies' comments.

The name, title, address, telephone number, and email address of the person for the local government who is most familiar with the proposed amendments is as follows:

Mr. Brandon Dunn, Principal Planner
Lee County Planning Section
P.O. Box 398
Fort Myers, Florida 33902-0398
(239) 533-8585
Email: bdunn@leegov.com

Included with this package are one paper copy and two CD ROM copies, in PDF format, of the proposed amendments and supporting data and analysis. By copy of this letter and its attachments, I certify that this amendment and supporting data and analysis has been sent on this date to the agencies listed below.

Sincerely,
**Lee County Department of Community Development
Planning Section**



Mikki Rozdolski
Manager, Community Development Operations

All documents and reports attendant to this transmittal are also being sent by copy of this cover in an electronic format to:

Comprehensive Plan Review
Department of Agriculture and Consumer Services

Mark Weigly
Department of Education

Plan Review
Department of Environmental Protection

Deena Woodward
Florida Department of State

Scott Sanders
Florida Fish and Wildlife Conservation Commission

Sarah Catala
FDOT District One

Margaret Wuerstle
Southwest Florida Regional Planning Council

Terry Manning, A.I.C.P., Senior Planner, Intergovernmental Coordination Section
South Florida Water Management District

NOTICE OF PROPOSED AMENDMENT TO THE
LEE COUNTY COMPREHENSIVE LAND USE PLAN
(TRANSMITTAL HEARING)

Attn:
LCBC-DEPT OF COMM DEVELOPMENT-
1500 MONROE ST
FORT MYERS, FL 33902

The Lee County Board of County Commissioners will hold a public hearing to consider proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan) on Wednesday, April 17, 2019. The hearing will commence at 9:30 a.m., or as soon thereafter as can be heard, in the Board Chambers at 2120 Main Street in Downtown Fort Myers. At the hearing, the Board will consider the proposed amendments for transmittal to the Florida Department of Economic Opportunity:

CPA2018-10014 Limerock Mining: Amend Lee Plan Goals 1, 9, 10, 33, 47, and 114, Chapter XIII, and Map 14 to: remove the requirements for a limerock supply inventory and demand analysis and for future limerock mines to be designated on Map 14; delete Map 14, the Future Limerock Mining Overlay; add a policy regarding compatibility of mining operations on airport capacities, facilities and operations; and, add a policy to require a public informational meeting prior to submittal of a mine excavation planned development rezoning application.

This transmittal hearing is the first step in a two step public hearing process to amend the Lee Plan. A second hearing will follow the Department of Economic Opportunity's review of the application.

Documentation for the Proposed Comprehensive Plan Amendment is available at <https://www.leegov.com/dcd/planning/cpa> or at the Department of Community Development located at 1500 Monroe Street, Fort Myers, Florida. This meeting is open to the public. Interested parties may appear at the meeting and be heard with respect to the proposed plan amendment. A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.

It is the intent of the Board of County Commissioners that the provisions of this Comprehensive Plan Amendment may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

Lee County will not discriminate against individuals with disabilities. To request an accommodation, contact Joan LaGuardia, (239) 533-2314, Florida Relay Service 711, or ADArequests@leegov.com, at least five business days in advance.
AD# 3480912 Apr. 5, 2019

STATE OF FLORIDA COUNTY OF LEE:

Before the undersigned authority personally appeared Debbie Davis, who on oath says that he or she is a Legal Assistant of the News-Press, a daily newspaper published at Fort Myers in Lee County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of

Legal Notices

In the Twentieth Second Judicial Circuit Court was published in said newspaper in the issues of:

04/05/19

Affiant further says that the said News-Press is a paper of general circulation daily in Lee County and published at Fort Myers, in said Lee County, Florida, and that the said newspaper has heretofore been continuously published in said Lee County, Florida each day and has been entered as periodicals matter at the post office in Fort Myers, in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 10th of April 2019, by Debbie Davis who is personally known to me. *DDavis*

Melanie C Altz
Notary



STAFF REPORT FOR
CPA2018-10014: Goal 33/Limerock
Mining

County Initiated **Text** and **Map** Amendments to the Lee Plan



Amended Lee Plan

Sections:

- Future Land Use
- Conservation and Coastal Management
- Chapter 13
- Table 1 (b)
- Map 14

Attachments:

Text Amendments
Map Amendment

Hearing Dates:

LPA: 12/17/2018

LPA: 1/28/2019

BTRN: 4/17/2019

PURPOSE

Amend the Comprehensive Plan (Lee Plan) Goals 1, 9, 10, 33, and 114, Chapter XIII, Table 1(b), and Map 14 to remove: the requirement for a limerock supply inventory and demand analysis; the requirement for future limerock mines to be designated on Map 14; and, delete Map 14, the Future Limerock Mining Overlay.

The purpose of these amendments is to remove conflicting provisions, reduce redundancies by removing regulatory provisions duplicative of the Land Development Code, and eliminate potential legal challenges caused by ambiguous or vague language.

SUMMARY OF CHANGES

Delete the requirement for a Mining Study:

- Mining is the only use in the Lee Plan that requires a market analysis, demonstrating regional limerock demand, would not be required; which is consistent with other uses/markets.
- The County would no longer be required to project and supply regional limerock demand and expand Map 14 and Table 1 (b), accordingly.
- Table 1 (b) is not tied to Map 14, and is addressed at time of Mine Development Order (MDO) after the Lee Plan amendment and rezoning processes.

Delete the Future Limerock Mining Overlay (Map 14):

- Applicants, for new limerock mining operations, would no longer be required to be identified as a future limerock mining area.
- Map 14 allows impacts to wetlands, groundwater and surface water which is contrary to the overall Lee Plan.
- Chapter 12 of the Land Development Code (LDC) is not being amended, and provisions located within Objective 33.2 are not being softened; protection of natural resources is not lessening nor is the standard of evaluation for mining operations.
- Including property on Map 14 results in no additional protections for nearby wildlife habitat, water resources, and compatibility with nearby uses.

Remove or Correct Ambiguous Language:

- Minimize the potential for legal liability over ambiguous language, which could result in litigation and Chapter 163 challenges.
- Amend provisions to eliminate paradoxes and conflicting provisions; clarify intent in a clear and concise manner to bring the policies into compliance with Section 163.3177(1) by establishing meaningful and predictable standards.

RECOMMENDATION

Staff recommends that the BoCC **transmit** the proposed text and map amendments based on the analysis in this staff report.

PART 1
BACKGROUND INFORMATION

On November 17, 2015, the Board of County Commissioners (BoCC) provided direction for staff to identify amendments to the Lee Plan to align with the BoCC's strategic planning initiatives, streamline, eliminate potential challenges, reduce redundancy/conflict within and between Lee Plan goals, and relocate regulatory provisions to the Land Development Code. Based on this direction, the proposed amendments will eliminate potential liabilities, streamline provisions, and reduce conflicts between provisions. Lee Plan provisions containing ambiguous or undefined phrases render the Lee Plan ineffective insofar that certain provisions cannot be implemented or utilized to achieve the intent for which they were created and create potential legal challenges for Lee County, which is problematic.

Undertaking a comprehensive and pragmatic review of the Lee Plan is an essential step towards ensuring its provisions are practical, meaningful, and have a clear purpose consistent with that of the overall Lee Plan. Part of this review involves proposing amendments to provisions that are outdated, no longer applicable or effective, internally inconsistent with the overall Lee Plan, or contain ambiguous and subjective terms or phrases that allows for inconsistent interpretations. As a result of this review, staff is proposing to eliminate the Future Limerock Mining Overlay (Map 14), Objective 33.1 and its subsequent policies, and other provisions related to Map 14. In addition, Table 1(b) will be amended to reflect the removal of Map 14. The proposed Lee Plan text and map amendments are based on the following analysis, and these proposed amendments can be found in Attachment 1 of this staff report.

Staff reviewed the 1990 Stipulated Settlement Agreement, the 1993 Henigar & Ray Study, and the 2008 Dover-Kohl Study in developing staff's recommendation.

1990 Stipulated Settlement Agreement:

The Density Reduction/Groundwater Resource (DR/GR) future land use category was incorporated into the Lee Plan as part of the implementation of the 1990 Stipulated Settlement Agreement between Lee County and the Florida Department of Community Affairs (DCA). Before the adoption of the Stipulated Settlement Agreement, the Lee County Division of Natural Resources proposed to protect the shallow aquifers, in part, through an amendment to the Future Land Use Map that would create a ground water resource future land use category (FLUC). This amendment, Plan Amendment Map/Text 89-19 (PAM/T 89-19), was initiated by the Board of County Commissioners on May 3, 1989.

The DCA objected to the amendment and through the 1990 Stipulated Settlement Agreement required that the allowable density in the new FLUC be lowered to reduce the overall carrying capacity of the Future Land Use Map (FLUM) to one dwelling unit per ten acres. In the 1990 Comprehensive Plan Amendment staff report, the permissible uses in the newly created DR/GR FLUC were described as follows:

An example of such uses are rural residential development at very low densities; limerock and fill dirt mining which cause no significant alteration to groundwater levels; all conservation uses; and continued agricultural activities. But urban development, with its resulting demands for improved drainage and associated commercial/industrial/institutional development, should not be permitted. - (Lee County 1990, II – 12)

At the time, it was acknowledged and illustrated through adopted Lee Plan provisions that limerock mining operations would need to demonstrate no significant alteration to groundwater levels, consistent with the intent and overall purpose of the DR/GR.

Also as a result of the 1990 Stipulation Settlement Agreement, an informational map was added to the Future Land Use Map series, showing current/approved limerock mining areas - Map 14. The purpose behind the creation of Map 14 was to identify the location of existing mining operations and the general location of anticipated mining operations. The Board of County Commissioners adopted the Stipulated Settlement Agreement plan amendment in September of 1990, and the DCA issued its Notice of Intent to find the amendment in compliance in late October 1990.

1993 Henigar & Ray Study:

To further understand the relationship between density and groundwater resources, established by data and analysis, Lee County, in July of 1993, hired Henigar & Ray Inc. to conduct and prepare a comprehensive ground water resource study. Henigar & Ray's publication identified three principal aspects of concern regarding the protection of ground water resources in the DR/GR: 1) those associated with the availability or recharge to the aquifer; 2) those associated with drawdown due to excessive pumping; and, 3) those that could degrade the quality of the groundwater. Henigar & Ray formulated four different scenarios with varying degrees of development (density and intensity) to better understand the connection between developmental magnitude and ground water resources. Agriculture and mining operations—which are allowable land uses in the DR/GR—were part of this analysis; however, the authors made no clear delineation between them. The study concludes that in order to protect water quantity and quality in the DR/GR, regardless of the development or use, every effort should be made to recharge the water table aquifer, and to minimize contaminations that would diminish water quality.

Dover-Kohl Southeast Lee County DR/GR Study:

In 2006, the BoCC commissioned a study of Southeast Lee County's DR/GR. In December 2007, the BoCC adopted a moratorium on certain Lee Plan amendments and rezonings in the Southeast Lee County (Resolution 07-34). In 2008, the Dover-Kohl Southeast Lee County DR/GR Report was prepared. In May of 2009, the first document intended to implement the Dover-Kohl Southeast Lee County DR/GR Report was released by the consulting team, entitled "Proposed Lee Plan Amendments For Southeast Lee County, Planning for the Density Reduction/Groundwater Resource Area (DR/GR)." The 2008 Dover-Kohl Study, in part, was centered on attempting to amend and transform Map 14 into a regulatory mechanism. According to the 2008 Dover-Kohl study, the rationale for amending Map 14 was to address,

“great uncertainty for investors and for existing residents of properties that may be affected by mining” (Dover-Kohl, 2009, p. 55). This uncertainty was predicated around the future locations of limerock mining operations, “providing too little guidance as to where the five potential land uses would be appropriate” (Dover-Kohl, 2008, p. 1.6). The 2008 Dover-Kohl Study labeled this uncertainty as a problem because mining operations were being proposed outside of the Traditional Alico Road Corridor (TARC).

Land Development Code (LDC) Chapter 12:

Prior to the adoption of the publicly initiated Comprehensive Plan Amendment CPA2008-00006, which was the culmination of the 2008 Dover-Kohl study, provisions within the LDC that were specific to limerock mining were amalgamated into what is now Chapter 12, “Resource Extraction.” Adoption of Chapter 12 included the following legislative findings:

Sec. 12-101. - Legislative findings.

- (a) Mining operations by their nature are not compatible with most other uses. However, the Lee Plan acknowledges that mining is a valuable resource.
- (b) It is important to seek opportunities to site and permit mines in a manner that fosters compatibility between the environment and surrounding communities and minimizes, to the extent possible, the creation of additional impacts on the environment and surrounding community.
- (c) Construction aggregate materials are a finite natural resource.
- (d) A reliable and predictable supply of construction aggregate materials is necessary to sustain public and private construction in Lee County without interruption.
- (e) The process of properly siting and permitting a mine in a time efficient and effective manner can be accomplished through the coordination and cooperation of all involved regulatory entities, including but not limited to, Lee County, Florida Department of Transportation, South Florida Water Management District, Department of Environmental Protection and the Army Corps of Engineers in order to successfully address all permitting and compatibility issues.

The creation of Chapter 12 resulted in a comprehensive and stringent set of regulations for mining, which were created with the purpose and intent of:

- (a) Establishing the general requirements for mining activities and providing the procedures, requirements and regulations pertaining to an application for approval and subsequent operation of mining activity in Lee County.
- (b) Establishing an integrated review and approval process based upon submittal of detailed information to be used by multiple reviewing entities to achieve siting and permitting of a mine in a comprehensive and time effective manner.

- (c) Eliminating redundancies with respect to submittal and review within Lee County and coordination of approvals between local, state and federal permitting entities.

Chapter 12 is not being amended; it is an effective regulatory tool which effectively and consistently addresses potential negative externalities that could arise from mining operations. As will be discussed below, the use of Map 14 as a regulatory tool does not address potential negative externalities of limerock mining. Furthermore, analysis of the provisions in the Lee Plan that address Map 14 demonstrates that there is an internal inconsistency within the Lee Plan which must be reconciled.

PART 2 STAFF DISCUSSION and ANALYSIS

The discussion and analysis that follows will address the following:

Limerock Market Analysis: Every seven years Lee County is obligated to update the inventory of existing mining operations and analyze the supply of limerock material in relation to the projected demand of limerock, both locally and regionally.

Future Limerock Mining Overlay: If there is a deficit of limerock material to meet demand, Lee County is required to designate land on Map 14 to meet the projected regional demand. In the future, when a deficit is determined, it will be the County's responsibility to add an area to meet the demand; this will require Lee County to obtain the hydrologic modeling and compatibility analysis necessary to determine where future mining should occur and to designate public or private property on Map 14.

Ambiguities: Language, such as "meet regional demands," "high disturbance activity," "efficiently mine," "existing disturbed areas," "less disturbed environments," "sufficient area near the traditional Alico Road corridor," and "clear necessity to do so" is ambiguous, resulting in inconsistent and conflicting interpretations.

Limerock Market Analysis

The Lee Plan requires a limerock market analysis which must be updated every seven years by Policy 33.1.4. The analysis projects the regional demand for limerock which is used to extrapolate a cap or quota on the quantity of limerock.

POLICY 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. The parcel-based database of existing land uses described in Policy 1.7.6 will be updated at least every seven years to reflect additional data about limerock mining in Southeast Lee County, including mining acreage zoned (project acres and mining pit acreage), pit acreage with active mine operation permits, acreage actually mined, and acreage remaining to be mined. Current

totals are based on data compiled in *Prospects for Southeast Lee County* for the year 2006. Future amendments will reflect any additional data that becomes available through routine monitoring reports and bathymetric surveys or other credible sources. The industrial acreage totals for Southeast Lee County that are found in Table 1(b) for Planning Community #18 will be used for the following purposes:

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

There are numerous problems and unanswered questions regarding the market analysis; such as why is the County regulating a single market? And, what methodology for calculating supply and demand must be employed? Must the methodology be the same for each application or required update?

When predicting the future demand of limerock, there are numerous variables to consider; for example, the inclusion or exclusion of certain variables, the different methodologies for determining the importance of each variable, and the extent of the variables such as establishing what and where constitutes a regional demand. The Lee Plan amendments based on the 2008 Dover-Kohl Study provide no standards, metrics, or a required methodology for calculating "regional demand." This absence of standards all but ensures that a consistent approach for calculating "regional demand" will not be feasible or attainable. Without any requirements that necessitate a consistent methodology to be utilized for the market analysis allows for hired consultants to manipulate the variables in order to achieve a goal outside of attempting to accurately predict the regional demand for limerock.

The market analysis is an ineffective mechanism insofar that it does not accomplish the intent, i.e. *"Reserving sufficient land for mining is critical to the economy, yet avoiding over-allocation is also critical because mining is an industrial process that unavoidably destroys natural resources and is not compatible with most other uses of nearby land"* (Dover-Kohl, 2008, p. B.2) . By eliminating the market analysis, the County would no longer be required to determine and supply regional limerock demand and expand Map 14 and Table 1 (b), accordingly; which is consistent with how all other uses/markets are treated in the Lee Plan. The market analysis does not prevent an over allocation of mining or protection of natural resources.

Regional Demand

The 2008 Dover-Kohl study identifies Charlotte, Collier, Desoto, Glades, Hendry, Lee, and Sarasota County as the group of Counties that represent the “regional demand.” Policy 1.7.12, Objective 10.1, and Objective 33.1 designate Lee County as the entity that is responsible for ensuring an adequate supply of limerock to meet the “regional demand”:

POLICY 1.7.12: The Future Limerock Mining overlay (Map 14) identifies sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through the Lee Plan's planning horizon (currently 2030). See Objective 33.1 and following policies. (Ordinance No. 10-20, 14-10)

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)

OBJECTIVE 33.1: LIMEROCK MINING. Designate on a Future Land Use Map overlay sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through this plan’s horizon (currently 2030). (Ordinance No. 10-20)

“Meet regional demands” is an ambiguous and arbitrary phrase. The region is not defined in the Lee Plan. Justification was not provided for choosing those specific Counties; this is problematic because the “region” may fluctuate based on variables outside of the County’s control, such as transportation costs.

In the future if a deficit is determined, it will be the County’s responsibility to add area to meet the demand; this will require Lee County to obtain the hydrologic modeling and compatibility analysis necessary to determine where future mining should occur and to designate public or private property. It is impossible for the County to designate adequate land “to meet the regional demand” while protecting other natural resources in perpetuity. Eventually, the County would be responsible for protecting natural resources or allocating sufficient land “to meet the regional demand” for limerock. This scenario, created by unclear and ambiguous provisions, will force the County to either choose protecting natural resources or providing adequate limerock supply. For these reasons, staff is proposing to delete Policy 1.7.12 and Objective 33.1, and amend Objective 10.1 as shown in Attachment 1. The proposed language will eliminate Lee County’s obligation for supplying limerock “to meet the regional demands.”

Table 1(b)

The 2008 Dover-Kohl Study envisioned a harmonious relationship between the limerock needs analysis and the industrial acreage allocation of Table 1(b). The quantity of limerock required to “meet regional demand” would be established through the market analysis. This quantity would then be reflected in the industrial acreage allocation for Southeast Lee County in Table 1(b).

The regional demand established by the market analysis and Policy 33.1.4 are ineffective in preventing an over-allocation of land to be used for limerock operations, assuming the market analysis is correct. Policy 33.1.4 lacks any regulatory language that would influence the process of amending Map 14. Likewise, Policy 33.1.1 lacks any clear standards, metrics, or regulations to amend Map 14. It is the mine development order that must be compliant with the industrial acreage allocation on Table 1(b), not the Lee Plan amendment or MEPD. Additionally, when the industrial acreage total limitations are calculated in accordance with Policy 33.1.4, the acreages previously approved are not factored until they are actually excavated. Therefore, an over allocation of land to meet the regional demand is possible. Likewise, the timing of the development process and the requirements currently found in Objective 33.1 make Table 1(b) ineffective in regulating the acreage of areas being mined.

Limerock quantity that is required “to meet the regional demand” is correlated to population projections. As such, as a new market analysis is introduced, the regional demand for limerock (acreage) will result in an expediential increase if the population is projected to increase because the superseding market analysis will be projecting further into the future with increased population projects. Similarly, if population projections were to be stagnant, the resulting regional limerock demand would be linear rather than expediential. If population projections were to decrease, the resulting regional limerock would decrease. As long as the market analysis remains a subjective projection of demand, and there are no established standards and methodologies for a market analysis; an applicant has the opportunity to furnish their own market analysis to justify amending this allocation.

Traditional Alico Road Corridor

Policy 1.7.12 and Objective 33.1 attempts to concentrate limerock mining in the Traditional Alico Road Corridor (TARC). However, these provisions neither contain regulatory language that would concentrate new and expanded limerock mining operations in the TARC, define what constitutes the TARC, nor allow for future expansion of areas needed to satisfy demand.

The TARC is an area that is not defined within the Lee Plan; however, it is described in the 2008 Dover-Kohl Study as an area consisting of land that is “more disturbed” and is where limerock mining operations should be concentrated: “Minimize the impacts of mining on valuable watersheds, residential areas, and the road system by concentrating mining activities in the traditional Alico mining corridor”(Dover-Kohl, 2008, p.3.18). The location of the TARC has been unclear since Map 14 was converted to a regulatory map which includes lands that are not adjacent to the TARC.

Land in Southeast Lee County is a finite commodity. Land with adequate extractable limerock material is also finite, more so than land in Southeast Lee County. This is due to various constraints that would limit access to Limerock within Southeast Lee County; for example conservation land, unwilling landowner, or land sans limerock. To designate land “to meet regional (limerock) demands” – in perpetuity – on a defined area with limited limerock creates an ominous scenario.

Future Limerock Mining Overlay (Map 14)

Policy 33.1.1 was adopted so that Map 14 became a mechanism to regulate new and expanded limerock mining operations. However, Policy 33.1.1 does not contain any implementable standards and measures:

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.

To understand the meaning of this policy, the content of each sentence must be considered:

- The first sentence, *“Limerock mining is a high-disturbance activity whose effects on the surrounding area cannot be completely mitigated”* is nothing more than a description of limerock mining operations. It does not provide any implementable standards or measures.
- The second sentence, *“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”* describes Map 14. The mere description of property on the map does not create regulation. Furthermore, the thought of concentrating limerock mining operations in the (TARC) is introduced. The TARC is an area that is not defined within the Lee Plan and this Policy lacks enforceable regulatory language or meaningful and predicable standards that would preclude mining operations from being located outside of the TARC. In fact, areas far outside the possible extent of the TARC were included on Map 14 when it became regulatory.
- The next portion of Policy 33.1.1 states, *“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.”* This sentence can be broken into two parts for purposes of analysis.

The first part seeks to require that any new or expanded limerock mining operations, not currently identified on Map 14, must be identified on Map 14. The requirement of new and expanded limerock mining operations being identified on Map 14 has become a prerequisite to the Mine Excavation Planned Development (MEPD) application process.

The second portion, *“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”* is muddled with undefined language that does not create any meaningful standards, measures, or requirements, which allows for numerous interpretations. For example, what does it mean to **fully utilize** limerock resources in or near existing disturbed areas? What does **in or near** an existing disturbed area mean? What does it mean to be a **less disturbed environment** or **existing disturbed area**? What does **clear necessity** mean? **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** could be interpreted numerous ways and without clear standards and criterion it is impossible to understand how it is to be applied.

To the extent regulatory language can be extrapolated from Policy 33.1.1, “Existing disturbed areas” and “less disturbed environments” are two vague phrases. Policy 33.1.1 establishes that the delineation between “less” and “more” disturbed areas is an important factor. It is important because the policy as written only requires demonstrating “a clear necessity” when expanding limerock mines into “less disturbed environments.” Less disturbed environment is not defined in the Lee Plan. The County, in several recent amendments to the Lee Plan, has found active agricultural areas to be more disturbed environments, and has in fact incentivized restoration of these areas with increased density.

Even if the property is deemed less disturbed, what necessitates this “clear necessity” is not clear. It is not defined in the Lee Plan. Clear necessity is similar to the phrase: “overriding public necessity” – an ambiguous phrase that has been removed from the Lee Plan. But unlike overriding public necessity, a clear necessity is not limited to a public necessity. A “clear necessity to do so” could be an applicant’s necessity, the commercial/industrial development’s necessity, the Florida Department of Transportation’s necessity, etc. As long as a necessity is clearly demonstrated, it could be found consistent Policy 33.1.1. It is an ambiguous, undefined term with countless interpretations and limited applicability to only those areas that have been designated as “less disturbed.”

A mine that is identified on Map 14 neither augments it from being subject to the regulations of Chapter 12 nor does it provide protection from potential negative externalities of a limerock mining operation above and beyond that of LDC Chapter 12. Any regulatory language that could possibly be extrapolated out from Policy 33.1.1 is unnecessary due to the provisions of Chapter 12.

Deleting the Future Limerock Mining Overlay (Map 14), along with the provisions as identified in Attachment 1 will not affect current limerock mining standards, regulations, and criterion. Furthermore, to hold that the ambiguous terms in Policy 33.1.1 in fact are regulatory would effectively result in the establishment of standards that are not meaningful and predictable and would not be in compliance with Section 163.3177(1) of the Florida Statutes.

Wetland Protection

Current Lee Plan provisions, Policy 33.1.3 and Policy 114.1.1, allow for limerock mining operations identified on the Future Limerock Mining Overlay (current Map 14) to impact wetlands and use those areas for industrial land uses:

POLICY 33.1.3: Concurrent with the update of Map 14 in 2010, the Lee Plan was amended to improve the ability to efficiently mine in Future Limerock Mining areas. An exception was made to the requirement in Policy 1.4.5 that DR/GR land uses must demonstrate compatibility with maintaining surface and groundwater levels at their historic levels. Under this exception, land in Future Limerock Mining areas may be rezoned for mining when the impacts to natural resources including water levels and wetlands are offset through appropriate mitigation within Southeast Lee County. The Land Development Code will be amended and maintained to include provisions for assessing and mitigating mining impacts and for transferring residential development rights from land zoned for limerock mining pits. Appropriate mitigation for water levels will be based upon site-specific data and modeling acceptable to the Division of Natural Resources. Appropriate wetland mitigation may be provided by the preservation of high-quality indigenous habitat, restoration or reconnection of historical flow-ways, connectivity to public conservation lands, restoration of historic ecosystems or other mitigation measures as deemed sufficient by the Division of Environmental Sciences. It is recommended that, whenever possible, wetland mitigation be located within Southeast Lee County. The Land Development Code will be revised to include provisions to implement this policy. (Ordinance No. 10-20)

POLICY 114.1.1: Development in wetlands is limited to very low-density residential uses and uses of a recreational, open space, or conservation nature.... **In Future Limerock Mining areas only (see Map 14), impacts to wetlands resulting from mining will be allowed by Lee County when those impacts are offset through appropriate mitigation, preferably within Southeast Lee County (see also Policy 33.1.3).**The Land Development Code will be revised to include provisions to implement this policy. (Ordinance No. 94-30, 00-22, 10-20, 18-06)

Since the adoption of the Future Limerock Mining Overlay, limerock operations have taken advantage of this exemption and have impacted wetlands. However, without the Future Limerock Mining Overlay, new limerock mining operations would be required to be consistent with the Wetlands future land use category. Staff is proposing a policy to memorialize Lee Plan consistency for wetland impacts allowed by these provisions Policy 33.3.1, Policy 114.1.1, and the Future Limerock Mining Overlay:

POLICY 10.1.7: Wetland impacts that were approved through a rezoning, as a result of being identified on the Future Limerock Mining Overlay, prior to the adoption of Ord. X will be deemed consistent with current Lee Plan wetland provisions.

Limerock mining operations could pursue a South Florida Water Management District (SFWMD), Florida Department of Environmental Protection (FDEP), and/or Army Corp of Engineers (ACOE) permits to impact wetlands, but the County would prohibit any commercial and/or industrial land uses (mining operations) within all wetland areas – consistent with the Wetlands Future Land Use Category. Removing the wetland exemption granted by being identified on the Future Limerock Mining Overlay is not a new standard; insofar, before the adoption of these provisions, limerock operations were required to be consistent with the Wetlands Future Land Use Category. Deleting this exemption is consistent with the Lee Plan, specifically with the provisions of Southeast Lee County (Goal 33) and the Wetlands future land use category. Impacts to wetlands approved for mines depicted on Map 14 as of the effective date of these amendments will remain consistent with the Lee Plan.

Additional Amendments

Staff is also proposing amendments to provisions located within the Future Land Use element; with the majority located in Goal 10 – “Natural Resource Extraction” and Goal 33 – “Southeast Lee County.” Amending Goal 10 and Goal 33, along with subsequent provisions, will improve clarity among provisions. This will be accomplished by deleting unclear or unnecessary language, and combining similar provisions; for example, the intent of Goal 33 is centered on limerock mining, which is just one of the allowable uses in Southeast Lee County. The proposed amendments to Goal 33 will succinctly define the goal for Southeast Lee County. Amendments to the provisions in Goal 33 are being proposed that will add clear and concise language and remove ambiguous jargon. Amendments to Objective 33.2 and subsequent policies are being proposed to clarify the intent, but are not being softened. Additional Lee Plan amendments not addressed within this staff report can be found in Attachment 1. Amending these provisions achieves the BoCC’s direction of streamlining the Lee Plan, and in this particular case creating greater unison among provisions.

PART 3 CONCLUSION

Staff is recommending amendments to the Future Land Use element to improve consistency, remove ambiguity, and establish predictable and measurable standards. The provisions within the Future Land Use element have been restructured to be more cohesive and user-friendly as well as deleting, relocating, and combining vague provisions with undefined terms, measures, and concepts that are overly complicated.

As demonstrated above and further elaborated upon in prior sections, there are numerous Lee Plan provisions that contain ambiguous, vague, and poorly defined phrases, which leads to inconsistent and conflicting interpretations and implementation and creates opportunities for potential legal challenges.

Staff recommends that the Board of County Commissioners *transmit* the proposed amendments based on the analysis and findings in this staff report.

PART 4
LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: December 17, 2018

A. LOCAL PLANNING AGENCY REVIEW:

Staff provided a brief presentation which covered consistency with the Lee Plan, reasons for the proposed amendments, and staff recommendation. The proposed amendments are in accordance with the BoCC's direction. The impetus for the proposed amendments was not to appease mining interests and was not related to the two active mine cases. Staff is not proposing any amendments to Chapter 12 of the Land Development Code (LDC) that would remove or weaken the criteria for approving a mine.

Following staff's presentation, members of the LPA asked questions regarding the proposed text and map amendments: if the proposed amendments would impact an on-going case; if other Future Land Use Categories (FLUC) allow limerock mining; if it is good planning practice to have regulatory language in the Comprehensive Plan; if the proposed amendments included deleting the requirement of a demand study for limerock; if the proposed amendments would alter the technical steps or review requirements for limerock mines; if staff would continue monitoring mining quantity; if there are different standards for Development Orders (DO) and Mine Development Orders (MDO); if there is a connection between the market analysis and Map 14; if there are differences in the public input process between rezoning cases and comprehensive plan amendments; and, if the ambiguous language should be defined instead of deleted.

Twenty seven members of the public addressed the LPA concerning the proposed amendments. Concerns expressed by the public included: blasting; potential for unlimited mine applications; eliminating Map 14 and related provisions; limerock mines being located outside of the Traditional Alico Road Corridor (TARC); removal of ambiguous or undefined comprehensive plan language and why staff did not attempt to correct this language; and, removal of opportunities for public to comment about mining cases.

Following the public comment portion, members of the LPA further discussed the proposed text and map amendments; their discussion incorporated the comments of the public.

B. LOCAL PLANNING AGENCY RECOMMENDATION:

An initial motion was made to recommend that the Board of County Commissioners transmit CPA2018-10014 provided staff follows the LPA’s recommendations. However, this motion was withdrawn and a new motion was made to continue CPA2018-10014 until the next LPA meeting. This would allow time for staff to address comments regarding the deletion of Map 14 and its corresponding provisions. There was general consensus, among members of the LPA, for deleting the requirement for a market study. The motion was passed 7 to 0.

VOTE:

DENNIS CHURCH	AYE
FRANK FEENEY	AYE
JAMES INK	AYE
KRISTINE SMALE	AYE
STAN STOUDE	AYE
JUSTIN THIBAUT	AYE
HENRY ZUBA	AYE

C. STAFF RESPONSE TO PUBLIC COMMENT AND LPA RECOMMENDATION:

Comments from the LPA and the public can be categorized into five main categories: 1) Deleting Map 14 would lessen protections of water resources, wildlife habitats, and compatibility of nearby residents; 2) The amendments would decrease opportunities for public involvement; 3) Limerock mines could be located outside of the Traditional Alico Road Corridor; 4) The number of mining applications would be unlimited without Map 14; and, 5) Staff did not attempt to correct the ambiguous and undefined language rather than deleting it. These topics are discussed in greater detail below.

1. Comments that deleting Map 14 would lessen protections of water resources, wildlife habitats, and compatibility of nearby uses.

Staff understands the concern and need to protect nearby wildlife habitats and water resources, as well as the concern and need to ensure compatibility with nearby uses. Staff contends that the existing rezoning process, which includes findings of consistency with Lee Plan provisions (including but not limited to: Policies 1.4.5, 1.5.1, 5.1.5, 114.1.1, 135.9.5, & 135.9.6; Objective 33.2 and its subsequent policies (current language); and, Goals 7, 10, 60, and 61 as well as their subsequent provisions), sans the requirement of being identified on Map 14 is superior to the rezoning process with the requirement of being identified on Map 14 with respect to providing the protections that are important to the county and nearby residents. Within the Lee Plan, there are no provisions tied to Map 14 that require a cumulative analysis of mining impacts. However, there is a requirement for a cumulative review of mining impacts in Objective 10.2, which is implemented during the rezoning process. This requirement is not proposed to be deleted.

Review of existing Lee Plan provisions reveals there are very few established criteria regarding the expansion of Map 14. Policy 33.1.1, as it exists, provides that “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).” However, as written, the “clear necessity” requirement is only applicable to areas that are “less disturbed” which limits the applicability of existing Policy 33.1.1 and removes any criteria that could be extrapolated from the policy.

It has been argued that the process of being added to Map 14 protects nearby wildlife habitat and water resources, and assures compatibility with nearby uses. However, Policy 33.1.1 lacks any implementable standards or criteria for approval of property on to Map 14; there are no Goals, Objectives, or Policies within the Lee Plan that specifically address the expansion of Map 14. Being identified on Map 14 does not protect nearby wildlife habitat and water resources, or compatibility with nearby uses.

Due to the lack of established criteria to expand Map 14 and the expectations of property owners, once land is included on it, Staff has found that Map 14 actually weakens the effectiveness to evaluate the County’s protections of nearby wildlife habitat, water resources, and compatibility with nearby uses at time of rezoning. The stringent and meaningful regulations of Chapter 12 of the Land Development Code (LDC) provide protections to nearby wildlife habitat, water resources, and compatibility. Yet, there is no specific requirement to submit the MEPD concurrently with an application to amend Map 14.

Chapter 12 of the LDC requires that mining activities must be consistent with the Lee Plan. In addition, Section 12-107 provides that:

- 1) Mining activities and mining reclamation plans in or near important water resource areas must be designed to minimize the possibility of contamination of the water during mining activity and after completion of the reclamation.
- 2) Mining operations must meet or exceed local, state and federal standards for noise, air, water quality, and vibration. (Lee Plan Policy 7.1.1)
- 3) Mining activities must be located and designed so as to minimize adverse environmental impacts and water resource impacts.
- 4) Mining activities, and industrial uses accessory to mining activities, must:
 - a. Have adequate fire protection, transportation facilities, wastewater treatment and water supply; and
 - b. Not precipitate significant negative effects with respect to dust, glare, light trespass and noise on surrounding land uses and natural resources.
- 5) Mining activities and reclamation efforts must facilitate the connection of natural resource extraction lakes and borrow lake excavations into a system of interconnected lakes and flowways that will enhance wildlife habitat values, and strengthen environmental benefits.

Section 12-113 requires that mining operations must be **located, designed, and operated** to:

- 1) Be compatible with surrounding private and publicly owned lands with special consideration given to protection of surrounding conservation and preservation owned lands.
- 2) Avoid adverse effects to existing agricultural, residential or conservation activities in the surrounding area.
- 3) Avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources.
- 4) Comply with the outdoor lighting provisions (except fixture mounting height standards) of this Code.
- 5) Cause minimal impacts to onsite and offsite ambient surface or groundwater levels quality and quantity.
- 6) Maintain established premining wet and dry season water level elevations and hydroperiods to restore and sustain water resources and adjacent wetland hydrology on and off-site during and upon completion of the mining operations.
- 7) Preserve and enhance existing natural flowways that the County deems important for local or regional water resource management.
- 8) Restore historic flowways that the County deems important for local or regional water resource management.
- 9) Preserve indigenous areas that are occupied wildlife habitat to the maximum extent possible.
- 10) Provide interconnection to off-site preserves and conservation lands via indigenous preservation, flowway preservation or restoration, and appropriate planted open space or buffer areas.
- 11) Maintain minimum surface and groundwater levels within the site boundaries as deemed appropriate by Natural Resources staff during the MEPD approval process.
- 12) Be designed to mimic or restore the natural system predisturbed water budget.

Before Map 14 became a regulatory tool, Lee County has denied limerock mine operations based on this criteria and Lee Plan provisions not including those specific to Map 14.

Based on the experience of implementing Chapter 12 through the MEPD rezoning process as well as considering comments from members of the LPA and the public, staff recommends that Chapter 12 be amended to provide requirements for additional setbacks from excavation areas for residential structures and an additional public input opportunity (to implement the proposed Policy 10.2.8 - see part C.2).

2. Comments that the amendments would decrease opportunities for public involvement.

Staff understands the importance of public input. Staff also acknowledges that the removal of Map 14 and the requirement that the Lee Plan be amended to include a specific property prior to proceeding with the rezoning process would require less overall public input; however, that was not the intent of the amendments nor was it the intent when Map 14 became a regulatory tool. To address this concern, staff recommends an additional policy within Lee Plan Goal 10: Natural Resource Extraction. This proposed policy will require a public informational meeting prior to submittal of the MEPD application. A new policy, Policy 10.2.8 is recommended as follows:

POLICY 10.2.9: As part of the MEPD rezoning application, a public informational meeting, which meets the requirements of Policy 17.3.4, must be held prior to the submittal of the rezoning application and within three miles of the boundary of the affected Community Plan Area.

3. Limerock mines could be located outside of the Traditional Alico Road Corridor (TARC).

It was never anticipated that all limerock mines within Lee County would be located in the TARC in perpetuity, and records show that this was the County's intent. Therefore, it must be expected that, with or without Map 14, limerock mines could be approved outside of the TARC.

Review of the transcripts from the State of Florida Division of Administrative Hearings (DOAH) hearings from when Map 14 was changed to a regulatory tool indicate that the intent of the TARC was to limit access to Corkscrew Road or other roads that served primarily residential communities. During those proceedings, when asked about the TARC, Lee County representatives provided that "they (the BOCC) kind of coined the phrase the traditional Alico mining area, and in their minds it was mines that mostly accessed Alico Road as (opposed) to accessing Corkscrew Road." This is also supported by Policy 10.2.4 (as adopted by Ord. # 10-20), which provides, in part, that transportation routes and anticipated traffic to and from a mine could be a limiting factor of approving/designing a mine. Regardless of a mines location, transportation impacts will be evaluated.

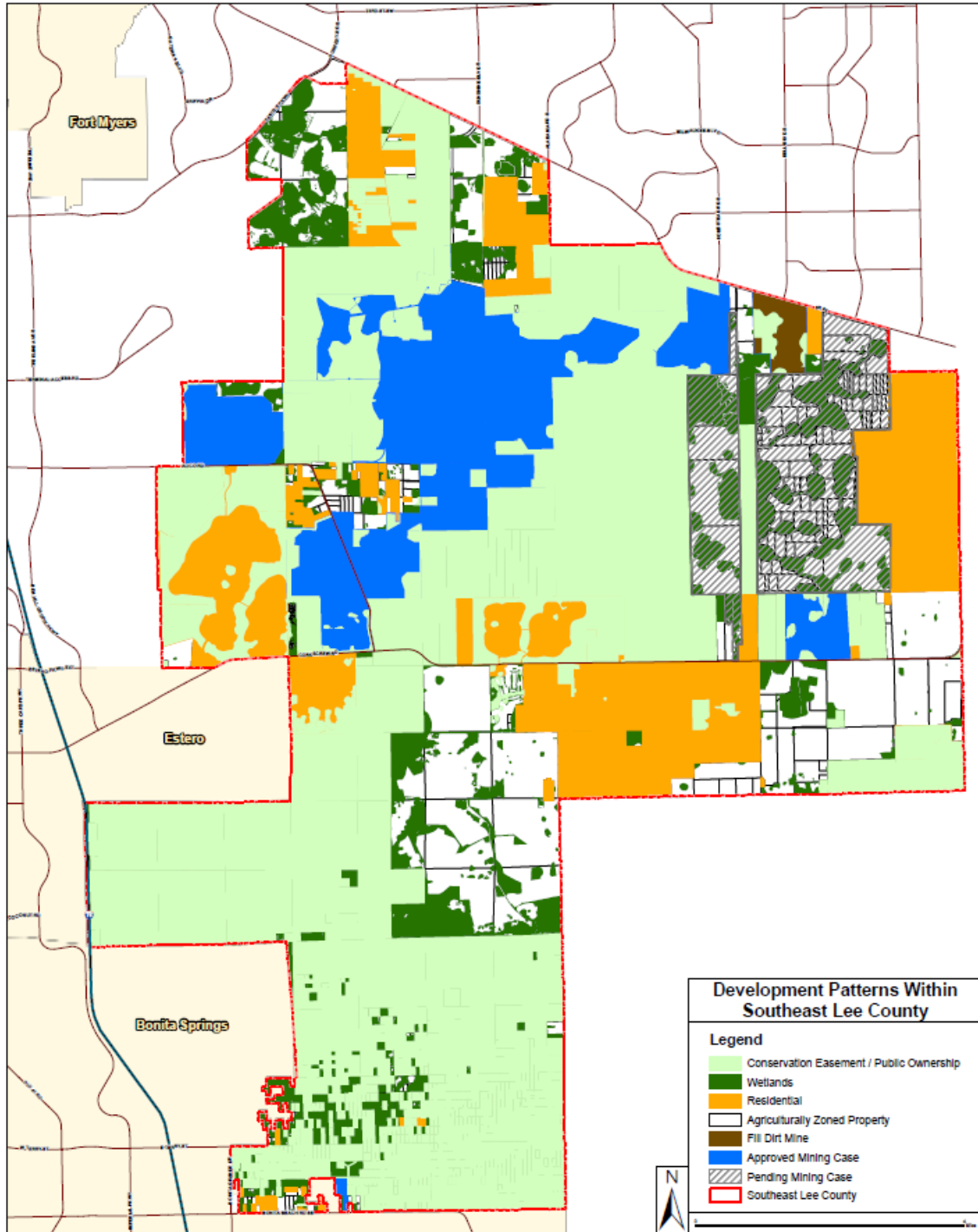
Additionally, even though the TARC is not defined, there are few (if any) remaining locations in the TARC appropriate for limerock mining and the associated impacts. Within the TARC there are existing residential uses; the Wild Turkey Strand Preserve and Stewart Cypress Slough, which serves as the headwaters to the Estero River; and land that has been approved for limerock mining.

4. Comments that without Map 14 there will be no limit on the number of mining applications.

Staff disagrees that the proposed amendments would be the impetus for an influx of Mine Excavation Planned Development (MEPD) applications, in part, because Map 14 does not prohibit applications for MEPD rezonings. Regardless of the number of MEPD rezoning applications,

compliance with the regulations of Chapter 12 as well as applicable Lee Plan provisions is still necessary for an MEPD application to be approved.

The location of future mines will be limited by resource availability and by existing land use patterns in Southeast Lee County; this will preclude widespread applications for limerock mining. The exhibit below shows existing land use patterns within Southeast Lee County:



5. Comments that staff did not attempt to correct the ambiguous or undefined language.

Whether or not the ambiguous and undefined language should be left in the comprehensive plan is a secondary question. Before staff reanalyzes the ambiguous and undefined language, they must first ascertain why they are defining the language and is it needed. Any attempt to correct or clarify the ambiguous and undefined language, as suggested, would result in language that is duplicative of the requirements in Chapter 12 of the LDC. The aforementioned is counter to the BoCC's direction to remove redundant language/relocate regulatory provisions to the LDC.

D. STAFF RECOMMENDATION:

Staff recommends that the BoCC *transmit* the proposed text and map amendments in Attachment 1, which has been modified as discussed in part above. Within Attachment 1, the highlighted or double-underlined language represents amendments after the 12/17/18 LPA meeting.

**PART 5
LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: January 28, 2019

A. LOCAL PLANNING AGENCY REVIEW:

Staff provided a presentation which covered consistency with the Lee Plan, reasons for the proposed amendments, staff recommendation, and addressed LPA and public comments from the 12/17/2018 LPA meeting. These comments included deleting Map 14; public input; potential for unlimited mine applications; limerock mines being located outside of the Traditional Alico Road Corridor (TARC); and, removal of ambiguous or undefined comprehensive plan language and why staff did not attempt to correct this language. Staff reiterated that the proposed amendments are in accordance with the BoCC's direction, and the impetus for the proposed amendments was neither to appease mining interests nor related to the two active mine zoning cases. Staff is not proposing any amendments to Chapter 12 of the Land Development Code (LDC) that would remove or weaken the criteria for approving a mine.

Fifteen members of the public addressed the LPA concerning the proposed amendments. Concerns expressed by the public were the same as those expressed at the 12/17/18 LPA meeting. Additionally, one member voiced a concern about language proposed by the Lee County Port Authority, and three members voiced concern about proposed language to Goal 33 to clarify provisions related to commercial development within Southeast Lee County.

Following the public comment portion, members of the LPA further discussed the proposed text and map amendments; their discussion incorporated the comments of the public.

B. LOCAL PLANNING AGENCY RECOMMENDATION:

A motion was made to recommend that the BoCC *transmit* CPA2018-10014 as provided in Attachment 1 as stipulated by the LPA to include Policy 47.2.7, proposed by LCPA, and to remove amendments regarding commercial uses. The motion was passed 6 to 1.

VOTE:

RAYMOND BLACKSMITH	AYE
RHONDA BREWER	AYE
JAMES INK	AYE
KRISTINE SMALE	AYE
STAN STOUDE	AYE
DON SCHROTENBOER	AYE
HENRY ZUBA	NAY

C. STAFF RESPONSE TO LPA RECOMMENDATIONS:

The LPA’s recommendation that the Board of County Commissioners transmit CPA2018-10014 included two stipulations. The first stipulation was to incorporate the Port Authority’s proposed language into Attachment 1 of the staff report, which is as follows:

POLICY 47.2.7: In the interest of the safety of air commerce, the county will not approve mining operations unless it is demonstrated that no adverse vibration, noise, air, and water quality impacts on existing and planned airport capacities, facilities, and operations will result from the proposed mining operation.

Staff supports the inclusion of proposed Policy 47.2.7 into Attachment 1 of the staff report. The LPA motion also included direction for staff to establish clear criteria as it relates to the potential impacts addressed within the proposed policy. Staff acknowledges the importance of clear and concise criteria; however, staff believes this criterion should be established in the Land Development Code (LDC) rather than in the proposed Policy 47.2.7, and is currently working on this language. The second stipulation included the removal of language referencing commercial development in Southeast Lee County, that is, Goal 33: “All commercial development will be limited to the extent of the subsequent provisions of this goal” and Policy 1.4.5: “and for the permissibility of commercial development.” Staff has amended Attachment 1 to reflect the LPA’s motion.

D. STAFF RECOMMENDATION:

Staff recommends that the BoCC *transmit* the proposed text and map amendments in Attachment 1, which reflects the motion of the LPA.

PART 6
BOARD OF COUNTY COMMISSIONERS
TRANSMITTAL HEARING FOR PROPOSED AMENDMENT

DATE OF PUBLIC HEARING: April 17, 2019

A. BOARD REVIEW:

Lee County staff provided a presentation which included: an overview of the proposed amendments and consistency with the Lee Plan; a timeline of public input opportunities leading up to the hearing; a summary of the process and requirements contained within Chapter 12 of the Land Development Code for a Mine Excavation Planned Development (MEPD) rezoning; a response to misguided public perceptions; a synopsis of legal arguments and implications; and the staff and the LPA's recommendations for transmitting the proposed amendments.

Sixty-nine members of the public addressed the BoCC concerning the proposed amendments. Concerns expressed by the public included decreased opportunity for public input; potential for unlimited mine applications; limerock mines being located outside of the Traditional Alico Road Corridor (TARC); impacts to quality of life; and impacts to water and environmental resources. In addition to these concerns there was some support for the proposed amendments. Following public comments, the County Attorney's Office provided additional testimony about the proposed amendments and issues that have arisen based on the current process.

A member of the BoCC asked staff to address concerns about sink holes and earthquakes due to limerock mining. Staff stated that these were not a concern and also reiterated that proposed mine operations are reviewed for potential impacts to water resources, wildlife habitat, traffic impacts and compatibility based on requirements of Chapter 12 and the Lee Plan as part of the MEPD process.

B. BOARD ACTION:

A motion was made to ***transmit*** CPA2018-10014 as recommended by staff and the LPA and as provided in Attachment 1. The motion was passed 3 to 1.

VOTE:

BRIAN HAMMAN	AYE
LARRY KIKER	ABSENT
FRANK MANN	NAY
JOHN MANNING	AYE
CECIL L. PENDERGRASS	AYE

II. Future Land Use

POLICY 1.1.13: The Tradeport future land use category includes areas ~~are of~~ commercial and industrial lands adjacent to the airport ~~needed to accommodate projected growth through the year 2030.~~ These areas will include developments consisting of light manufacturing or assembly, warehousing, and distribution facilities; research and development activities; laboratories; ground transportation and airport-related terminals or transfer facilities; hotels/motels, meeting facilities; and office uses. Stand alone retail commercial uses intended to support and compliment the surrounding business and industrial land uses are permitted if they are approved as part of a Development of Regional Impact (DRI) or Planned Development rezoning. Stand alone retail commercial uses are limited to 1 acre out of every 10 Tradeport and preserved wetland acres within the project. To provide an incentive to preserve upland habitat, Developments of Regional Impact or Planned Developments may also receive additional stand alone retail acres at the rate of 1 additional acre out of every 10 acres of preserved and enhanced uplands within the project that protect wetlands, flowways or occupied listed species habitat. Ancillary retail commercial uses, related directly to the sale of products manufactured or services provided in the Tradeport, are allowed if they are part of a planned development. Residential uses, other than bona fide caretaker residences, are not permitted in this category. Caretaker residences are not permitted in the Airport Noise Zone B. ~~Limerock mining may be approved through the Mine Excavation Planned Development rezoning process for the land designated Tradeport on the Future Limerock Mining map (Map 14.) Because this area is located within the Six Mile Cypress Basin and is also a primary point of entry into Lee County,~~ Special environmental and design review guidelines will be applied to its development this future land use category because of its location within the Six Mile Cypress Basin and in order to maintain the appearance of this area as a primary point of entry into Lee County. Property in Section 1 and the east 1/2 of Section 2, Township 46 South, Range 25 East, and in Section 6, Township 46 South, Range 26 East, must be rezoned to a planned development zoning category prior to any development other than the construction of essential public services. During the rezoning process, the best environmental management practices identified on pages 43 and 44 of the July 28, 1993 Henigar & Ray study entitled, "Groundwater Resource Protection Study" will be rebuttably presumed to be necessary to protect potential groundwater resources in the area. (Ordinance No. 94-30, 02-02, 03-04, 04-16, 07-09, 09-06, 10-14, 10-20, 10-37, 18-05)

- Delete reference to Map 14.

POLICY 1.4.5: The Density Reduction/Groundwater Resource (DR/GR) land use category includes upland areas that provide substantial recharge to aquifers most suitable for future wellfield development. These areas also are the most favorable locations for physical withdrawal of water from those aquifers. Only minimal public facilities exist or are programmed.

1. New land uses in these areas that require rezoning or a development order must demonstrate compatibility with maintaining surface and groundwater levels at their historic levels (~~except as provided in Policies 33.1.3 and 33.3.5~~) utilizing hydrologic modeling, the incorporation of increased storage capacity, and inclusion of green infrastructure. The modeling must also show that no adverse impacts will result to properties located upstream, downstream, as well as adjacent to the site. Offsite mitigation may be utilized, and may be required, to demonstrate this compatibility. Evidence as to historic levels ~~may~~ must be submitted during both the rezoning ~~or~~ and development review processes.
2. Permitted land uses include agriculture, natural resource extraction and related facilities, conservation uses, public and private recreation facilities, and residential uses at a maximum standard density of one dwelling unit per ten acres (1 du/10 acres). ~~See Policies 33.3.2, 33.3.3, 33.3.4, 33.3.5 and 33.3.6~~ See Objectives 33.2 and 33.3 for potential density adjustments resulting from concentration or transfer of development rights.
 - ~~a. For residential development, also see Objective 33.3 and following policies. Commercial and civic uses can be incorporated into Mixed Use Communities to the extent specifically provided in those policies.~~
 - ~~b. Individual residential parcels may contain up to two acres of Wetlands without losing the right to have a dwelling unit, provided that no alterations are made to those wetland areas.~~
 - ~~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.~~

- **Remove cross references.**
- **Streamline and clarify Policy.**

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

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).

- Delete reference to 2030.
- Delete Table 1(b) reference to limerock mining.

~~**POLICY 1.7.12:** The Future Limerock Mining overlay (Map 14) identifies sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through the Lee Plan's planning horizon (currently 2030). See Objective 33.1 and following policies. (Ordinance No. 10-20, 14-10)~~

- Delete Policy that references Map 14 along with ambiguous and unclear language.

~~**POLICY 1.7.13**~~ **1.7.12:** Renumber.

~~**POLICY 9.1.4:** Protect bonafide agricultural activities in Future Non-Urban Areas on lands designated as Agricultural on the agricultural overlay (see Map 20) from the impacts of new natural resource extraction operations, recreational uses, and residential developments. However, in Future Limerock Mining areas (see Map 14) agricultural activities may be limited to the interim period prior to mining or may need to coexist with adjoining mining activities and mining pits. (Ordinance No. 94-30, 02-02, 10-20)~~

- Delete reference to Map 14; update language for consistency.

~~**POLICY 9.1.7:** Existing agricultural lands within the DR/GR land use category provide important surface and subsurface connections for water and wildlife resources. The county supports the integration of agriculture within a comprehensive and coordinated effort of county and regional agencies to manage the water resources in a manner that includes the protection and restoration of natural systems within Southeast Lee County. (Ordinance No. 10-19)~~

- Delete Policy 9.1.7; Amend and relocate language to proposed provision – Policy 33.1.8.

GOAL 10: NATURAL RESOURCE EXTRACTION. To protect areas containing commercially valuable natural resources from incompatible urban development, while insuring that natural resource extraction operations minimize or eliminate adverse effects on surrounding land uses and on other natural resources. (Ordinance No. 02-02, 10-20)

- Update for consistency.

~~**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) Minimize or eliminate adverse effects of natural resource extraction operations through efficient use of land, natural resources, and reclamation.~~

- Update language to reflect the reconfiguration of Goal 10 and subsequent provisions.

~~POLICY 10.2.3~~ **10.1.1:** Limit the depth of mining for a proposed excavations will be limited as necessary in order to prevent any breach of an aquaclude or confining layer. (Ordinance No. 10-20)

- Relocated from Policy 10.2.3.

~~POLICY 10.1.1~~ **10.1.2:** Encourage the sale of overburden from approved limerock mines, is encouraged because converting overburden into fill material avoids additional mining at other locations. However, shallow mines that produce primarily fill dirt should be sited as close as possible to locations of high demand to minimize the distance fill material must be trucked to likely destinations (see also Policy 33.1.5). (Ordinance No. 10-20)

- Relocated from Policy 10.1.1.
- Clarify language.

POLICY 10.1.3: Supplement limerock supply by encouraging public and private entities to recycle asphalt and concrete materials.

- Relocated from Policy 33.1.6.

POLICY 10.1.4: ~~Limerock mining may be permitted only in accordance with Objective 33.1 and its policies. Other natural resource extraction activities, such as fill dirt operations (and ancillary industrial uses may be permitted as follows:~~

- ~~1. In areas indicated on the Future Land Use Map as Rural, Open Lands, and Density Reduction/Groundwater Resource provided they have there is adequate fire protection, transportation facilities, wastewater treatment and water supply, and provided further that they have no significant adverse effects such as dust and noise on compatibility with surrounding land uses and natural resources. In the Density Reduction/Groundwater Resource category, fill dirt operations are further restricted in accordance with Policy 33.1.5.~~
- ~~2. In order to reduce transport costs and minimize wear on the county's roadways, the extraction and transport of fill material may also be permitted as an interim use in the Future Urban Areas provided that the above requirements are met; however, special restrictions may also be applied to protect other land uses. These determinations will be made during the rezoning process. Ancillary crushing of limerock strata embedded within fill material may be permitted for use on-site.~~

~~(Ordinance No. 94-30, 00-22, 02-02, 10-20)~~

POLICY 10.1.5: ~~Lee County will support efforts by government, community leaders, and the extractive industry owners and businesses to incorporate reclaimed mining pits into a comprehensive and coordinated effort of county and regional agencies~~ Encourage a collaborative effort between public and private entities to maximize the potential of reclaimed mining pits for enhancing wildlife habitat values, minimizing or repairing the long-term impacts to adjoining natural systems, providing for human recreation,

education, and other appropriate uses, and/or strengthening community environmental benefits. (Ordinance No. 99-15, 02-02, 10-20)

- Clarify language.

POLICY 10.1.6: Maintain land development regulations to minimize or eliminate adverse effects of natural resource extraction operations.

- Create policy that maintains land development regulations for limerock mines.
- Create policy based on comments from 12/17/18 LPA meeting.

POLICY 10.1.7: Wetland impacts that were approved through a rezoning, as a result of being identified on the Future Limerock Mining Overlay, prior to the adoption of Ord. X will be deemed consistent with current Lee Plan wetland provisions.

- Create policy to address wetland impacts previously allowed under Map 14 and related provision.

OBJECTIVE 10.2: ~~Coordinate mining activities, including evaluation,~~ Ensure new and expanded natural resource extraction operations are compatible with the environment and surrounding land uses through requirements for monitoring, reclamation, and redevelopment, with water supply planning, surface and groundwater management activities, wetland protection, and wildlife conservation, ~~and future residential activities.~~ Consider the cumulative and watershed-wide impacts of ~~mining activities~~ natural resource extraction operations, not just the direct impacts of each individual mine in isolation. (Ordinance No. 10-20)

- Clarify language and the intent of the policy.

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

1. Potential impacts on the aquatic ecology and water quality of mining pits that will result from mining pit design.
2. Likely post-mining impacts such as runoff or surface and groundwater flow on land uses surrounding the site.
3. Consideration of the primary and secondary impacts at the local and watershed levels. (Ordinance No. 00-22, 02-02, 10-20)

- Clarify language.

POLICY 10.1.2 10.2.3: ~~The future~~ All proposed uses of any new or existing natural resource extraction operation must be evaluated at the time the property is rezoned

~~undergoes planned development zoning review. Site plans should be designed to incorporate proposed future uses, including open space, and to ensure the protection of surface and ground water resources, wildlife, and native plant communities. Uses may be added to an approved zoning through the appropriate planned development zoning review process. (Ordinance No. 10-20)~~

- Clarify language and the intent of the policy.

~~**POLICY 10.1.3 10.2.8:** Reclamation is intended to replace or offset ecological benefits lost during extraction, including the creation of conditions that will support a healthy water body to the extent practicable. Applications for nNatural resource extraction permits for new or expanding sites, or for future use of such sites, must include are required to submit a reclamation plan that provides assurance of implementation. This plan ~~must address the reclamation and sustainable management of all existing and future mining pits, preserves, and buffer areas that are or may in the future be related to the mining operation. Reclamation plans in Future Limerock Mining areas (see Map 14) must include littoral shelves suitable for native wetland plants, revegetation of disturbed land, allowance for wildlife movement, and minimization of long term effects on surrounding surface and groundwater levels. Reclamation plans for mines providing primarily fill material should provide more extensive littoral shelves and describe how shorelines will be configured and managed and how disturbed uplands will be restored or converted to other acceptable land uses. Reclamation plans in or near important surface and groundwater resource areas must also be designed to minimize the possibility of contamination of the surface and groundwater during mining and after completion of the reclamation.~~ (Ordinance No. 00-22, 02-02, 10-20)~~

- Clarify language.
- Remove language belonging in or redundant with the Land Development Code.

~~**POLICY 10.2.9:** As part of the MEPD rezoning application, a public informational meeting, which meets the requirements of Policy 17.3.4, must be held prior to the submittal of the rezoning application and within three miles of the boundary of the affected Community Plan Area.~~

- Create policy that increases opportunities for public input for the MEPD rezoning process.
- Create policy based on comments from 12/17/18 LPA meeting.

~~**OBJECTIVE 10.3:** Determine and maintain a balance between the county's petroleum resources and the public health, safety and welfare. (Ordinance No. 98-09, 10-20, 17-13)~~

- Delete redundant Objective.

~~**GOAL 33: SOUTHEAST LEE COUNTY.** To protect natural resources in accordance with the county's 1990 designation of Southeast Lee County as a groundwater resource area., augmented through a comprehensive planning process that culminated in the 2008 report, *Prospects for Southeast Lee County*. To achieve this goal, it is necessary to address the inherent conflict between retaining shallow aquifers for long term water storage and extracting the aquifer's limestone for processing into construction aggregate. The best overall balance between these~~

~~demands will be achieved through a pair of complementary strategies: consolidating future mining in the traditional Alico Road industrial corridor while initiating a long-term restoration program to the east and south to benefit water resources and protect natural habitat. Residential and commercial development will not be significantly increased except where development rights are being explicitly concentrated by this plan. Agriculture uses may continue, and environmental restoration may begin. This goal and subsequent objectives and policies apply to Southeast Lee County as depicted on Map 1, Page 2. (Ordinance No. 10-20). Protect Southeast Lee County's natural resources through public and private acquisition and restoration efforts. Development incentives will be utilized as a mechanism to preserve, enhance, and protect natural resources, such as regional flow-ways and natural habitat corridors in the development of privately owned land. Allowable land uses will include conservation, agriculture, public facilities, low density or clustered residential, natural resource extraction operations, and private recreation facilities; allowable land uses must be compatible with protecting Southeast Lee County's environment.~~

- Clarify intent of Goal 33.
- Delete objective that references vague and ambiguous terms and the deleted overlay.

~~OBJECTIVE 33.1: LIMEROCK MINING.~~ ~~Designate on a Future Land Use Map overlay sufficient land near the traditional Alico Road industrial corridor for continued limerock mining to meet regional demands through this plan's horizon (currently 2030). (Ordinance No. 10-20)~~

- Delete objective that references vague and ambiguous terms and the deleted overlay.

~~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)~~

- Delete objective that references vague and ambiguous terms and the deleted overlay.

~~POLICY 33.1.2:~~ ~~Most land identified on Map 14 is in the Density Reduction/Groundwater Resource land use category (see Policy 1.4.5) and will also be subject to those special requirements. Future Limerock Mining land outside the DR/GR area will also be subject to requirements of the appropriate designation on Map 14. Goal 10 and its objectives and policies contain additional guidance on mining. The Land Development Code will continue to provide additional details on mining approvals and operations. (Ordinance No. 10-20)~~

- Delete objective that references vague and ambiguous terms and the deleted overlay.

~~**POLICY 33.1.3:** Concurrent with the update of Map 14 in 2010, the Lee Plan was amended to improve the ability to efficiently mine in Future Limerock Mining areas. An exception was made to the requirement in Policy 1.4.5 that DR/GR land uses must demonstrate compatibility with maintaining surface and groundwater levels at their historic levels. Under this exception, land in Future Limerock Mining areas may be rezoned for mining when the impacts to natural resources including water levels and wetlands are offset through appropriate mitigation within Southeast Lee County. The Land Development Code will be amended and maintained to include provisions for assessing and mitigating mining impacts and for transferring residential development rights from land zoned for limerock mining pits. Appropriate mitigation for water levels will be based upon site specific data and modeling acceptable to the Division of Natural Resources. Appropriate wetland mitigation may be provided by preservation of high quality indigenous habitat, restoration or reconnection of historic flowways, connectivity to public conservation lands, restoration of historic ecosystems or other mitigation measures as deemed sufficient by the Division of Environmental Sciences. It is recommended that, whenever possible, wetland mitigation be located within Southeast Lee County. The Land Development Code will be revised to include provisions to implement this policy. (Ordinance No. 10-20)~~

- Delete objective that references vague and ambiguous terms and the deleted overlay.

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

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

~~(Ordinance No. 10-20)~~

- Delete policy referencing table 1 (b) and the associated limerock acreage restriction.

~~**POLICY 33.1.5:** The sale of overburden from approved limerock mines is encouraged because converting overburden into fill material avoids additional mining at other locations. However, shallow mines that produce primarily fill dirt should be sited as close as possible to locations of high demand to minimize the distance that fill material must be trucked to likely destinations (see also Policy 10.1.1). In Southeast Lee County shallow mines are generally unnecessary because fill dirt is available as a byproduct of limerock mines; however, shallow mines may be permitted on sites immediately adjoining areas of high demand for fill dirt such as Lehigh Acres. (Ordinance No. 10-20)~~

- Redundant with Policy 10.1.1.

~~**POLICY 33.1.6:** Asphalt and concrete can be recycled to produce aggregate that is comparable to the products of limerock mines. Lee County should be a leader in using recycled aggregate in its construction projects and in encouraging privately operated recycling facilities in appropriate locations to minimize the need to mine or import additional aggregate. (Ordinance No. 10-20)~~

- Relocated to Policy 10.1.6.

~~**POLICY 33.1.7:** Protect agricultural activities on lands designated as Agricultural on the agricultural overlay (see Map 20) from the impacts of new natural resource extraction operations, recreational uses, and residential developments. However, in Future Limerock Mining areas (see Map 14), agricultural activities may be limited to the interim period prior to mining or may need to coexist with adjoining mining activities and mining pits. (Ordinance No. 10-20)~~

- Duplicative policy, delete.

OBJECTIVE 33.2 33.1: WATER, HABITAT, AND OTHER NATURAL RESOURCES. ~~Designate on a Future Land Use Map overlay the land in Southeast Lee County that is most critical toward restoring historic surface and groundwater levels and for improving the protection of other natural resources such as wetlands and wildlife habitat. Protect and restore natural resources within Southeast Lee County including, but not limited to, surface and ground water, wetlands, and wildlife habitat. (Ordinance No. 10-19)~~

- Clarify intent of objective.

~~**POLICY 33.2.1 33.1.1:** Large-scale ecosystem integrity in Southeast Lee County should be maintained and restored. Protection and/or restoration of land is of even higher value when it connects existing corridors and conservation areas. Restoration is also highly desirable when it can be achieved in conjunction with other uses on privately owned land including agriculture. Lee County Natural Resources, Conservation 20/20, and Environmental Sciences staff will work with landowners who are interested in voluntarily restoring native habitats and landowners who are required to conduct restoration based upon land use changes. The parameters for the required restoration will be established in the Land Development Code by 2012 or within planned development zoning approvals as established in Objective 33.3. (Ordinance No. 10-19, 15-13)~~

- Update language; Remove dates; Delete redundant language.

POLICY ~~33.2.2~~ 33.1.2: The DR/GR Priority Restoration overlay depicts seven tiers of land where protection and/or restoration would be most critical to restore historic surface and groundwater levels and to connect existing corridors or conservation areas (see Policy 1.7.7 and Map 1, Page 4). Within these tiers, density incentives will be utilized as a mechanism to improve, preserve, and restore regional surface and groundwater resources and wildlife habitat of state and federally listed species; with Tier 1 and Tier 2 being the most incentivized tiers. ~~This overlay identifies seven tiers of land potentially eligible for protection and restoration, with Tier 1 and Tier 2 being the highest priority for protection from irreversible land use changes. Lee County will may evaluate consider amendments to this overlay map every 7 years to determine if based on changes in public ownership, land use, new scientific data, and/or demands on natural resources justify updating this map. This overlay does not restrict the use of the land, in and of itself. It will be utilized as the basis for incentives and for informational purposes since this map will represent a composite of potential restoration and acquisition activities in the county. (Ordinance No. 10-19)~~

- Clarify language pertaining to updates made to the tiers and applicable provisions and maps.

POLICY ~~33.2.3~~ 33.1.3: ~~It is in southwest Florida's interest for public and nonprofit agencies to actively p~~Pursue acquisition of (partial or full interest) of ~~in~~ land within the Tier 1 areas in ~~this~~ the DR/GR Priority Restoration overlay through direct purchase; partnerships with other government agencies; long-term purchase agreements; right of first refusal contracts; land swaps; and or other appropriate means. ~~These lands would to~~ provide critical connections to ~~other~~ conservation lands that serve as the backbone for water resource management and wildlife movement within the DR/GR Southeast Lee County. Tier 2 lands are of equal ecological and water resource importance as Tier 1 but have better potential to remain in productive agricultural use ~~as described in Policies 33.2.5 and 33.2.6.~~ Tier 3 lands and the southern two miles of Tiers 5, 6, and 7 can provide an important wildlife connection to conservation lands in Collier County and an anticipated regional habitat link to the Okaloacoochee Slough State Forest. Tiers 1, 2, 3, and the southern two miles of Tiers 5, 6, and 7 will qualify for unique development incentives due to the property's potential for natural resource benefits and/or wildlife connections. Additionally, the county may consider incentives, within all tiers, for private landowners to improve water resources and natural ecosystems.

- ~~1. The county will consider incentives for private landowners to maintain and improve water resources and natural ecosystems on properties within Tier 2 through Tier 7, including but not limited to acquiring agricultural or conservation easements; compensation for water storage that is in the public interest; and providing matching funds to secure federal and state funds/grants for improving agricultural best management practices or protection/restoration of wetlands on existing agricultural operations~~

~~2. Tiers 1, 2, 3, and the southern two miles of Tiers 5, 6, and 7 will qualify for incentives when development rights are transferred to less sensitive sites in accordance with Policies 33.3.3 and 33.3.5.~~

~~3. Permanent protection of land within all tiers may also occur through:~~

~~a. Using resource extraction mitigation fees to acquire land;~~

~~b. Establishing a Regional Offsite Mitigation Area (ROMA); or~~

~~c. Concentrating development as depicted in the Southeast DR/GR Residential Overlay (Map 17) as detailed in Policies 33.3.2, 33.3.3, 33.3.4 and 33.3.5.~~

(Ordinance No. 10-19, 12-24)

- 'Unique development incentives' refers to the provisions in Goal 33; whereas, 'other incentives' refers to incentives that the County may offer in the future such as the creation of the Environmental Enhancement Protection Conservation Overlay (EEPCO). A proposed incentive would be required to undergo the CPA process.
- Streamline policy.

POLICY ~~33.2.4~~ 33.1.4: Renumbered.

POLICY ~~33.2.5~~ 33.1.5: Renumbered.

POLICY ~~33.2.6~~ 33.1.6: Renumbered.

POLICY ~~33.2.7~~ 33.1.7: Renumbered.

POLICY 33.1.8: Existing agricultural lands within Southeast Lee County have the potential to improve important surface and subsurface connections for water and wildlife resources through utilizing best management practices. The county supports a comprehensive and coordinated effort to manage water resources in a manner that includes the protection and restoration of natural systems within Southeast Lee County. (Ordinance No. 10-19)

- Create new policy using language from deleted Policy 9.1.7 and amend language to clarify intent.

OBJECTIVE ~~33.3~~ 33.2: Renumbered.

POLICY ~~33.3.1~~ 33.2.1: Renumbered.

POLICY ~~33.3.2~~ 33.2.2: Renumbered.

POLICY ~~33.3.3~~ 33.2.3: Renumbered.

POLICY ~~33.3.4~~ 33.2.4: Renumbered.

OBJECTIVE ~~33.4~~ 33.3: Renumbered.

POLICY ~~33.4.1~~ 33.3.1: Renumbered.

POLICY ~~33.4.2~~ 33.3.2: Renumbered.

POLICY ~~33.4.3~~ 33.3.3: Renumbered.

III. Transportation

POLICY 47.2.7: In the interest of the safety of air commerce, the county will not approve mining operations unless it is demonstrated that no adverse vibration, noise, air, and water quality impacts on existing and planned airport capacities, facilities, and operations will result from the proposed mining operation.

- Include Lee County Port Authority’s proposed policy to address compatibility with proposed mining operations.
- Recommended for inclusion, into Attachment 1, as part of the LPA’s motion for the 01/28/19 meeting, which passed with a vote of 6-1.

VII. Conservation and Coastal Management

POLICY 124.1.1: Ensure that development in wetlands is limited to very low density residential uses and uses of a recreational, open space, or conservation nature that are compatible with wetland functions. The maximum density in the Wetlands category is one unit per 20 acres, except that one single family residence will be permitted on lots meeting the standards in Chapter XIII of this plan, and except that owners of wetlands adjacent to Intensive Development, General Interchange, Central Urban, Urban Community, Suburban, and Outlying Suburban areas may transfer densities to developable contiguous uplands under common ownership in accordance with Footnote 8b of Table 1(a), Summary of Residential Densities. ~~In Future Limerock Mining areas only (see Map 14), impacts to wetlands resulting from mining will be allowed when those impacts are offset through appropriate mitigation, preferably within Southeast Lee County (see also Policy 33.1.3). Appropriate wetland mitigation may be provided by preservation of high quality indigenous habitat, restoration or reconnection of historic flowways, connectivity to public conservation lands, and restoration of historic ecosystems or other mitigation measures as deemed sufficient by Lee County.~~

- Delete reference to Map 14.
- Add General Interchange to list of future land use categories for consistency with Table 1(a). Table 1(a) was amended by Ord. #16-02 to allow density transfer in General Interchange.

POLICY 124.1.2: The county’s wetlands protection regulations will be consistent with the following:

1. The county will not undertake an independent review at the Development Order stage of the impacts to wetlands resulting from development in wetlands that is specifically authorized by a DEP or SFWMD dredge and fill permit or exemption.
2. No development in wetlands regulated by the State of Florida will be permitted by Lee County without the appropriate state agency permit or authorization.

3. Lee County will incorporate the terms and conditions of state permits into county permits and will prosecute violations of state regulations and permit conditions through its code enforcement procedures.
4. Every reasonable effort will be required to avoid or minimize adverse impacts on wetlands through the clustering of development and other site planning techniques. On- or off-site mitigation will only be permitted in accordance with applicable state standards.
5. Mitigation banks and the issuance and use of mitigation bank credits will be permitted to the extent authorized by applicable state agencies.
- ~~6. Lee County supports a more lenient wetland protection standard for limerock mines within the Future Limerock Mining overlay (Map 14). Lee County's overall wetland protection goals are better served by concentrating mining activity than by preserving small isolated wetlands on mining sites.~~

~~7~~ 6. Wetland density will be determined by the jurisdictional wetland line. Impacted wetlands may not be calculated at the underlying upland density rate. Density calculations for impacted wetlands must be at 1 dwelling unit per 20 acres. (Ordinance No. 94-30, 00-22, 07-12, 10-20, 10-39)

- Delete reference to Map 14.
- Clarify language.

XIII. Administration

b. Administrative Interpretation of the Plan

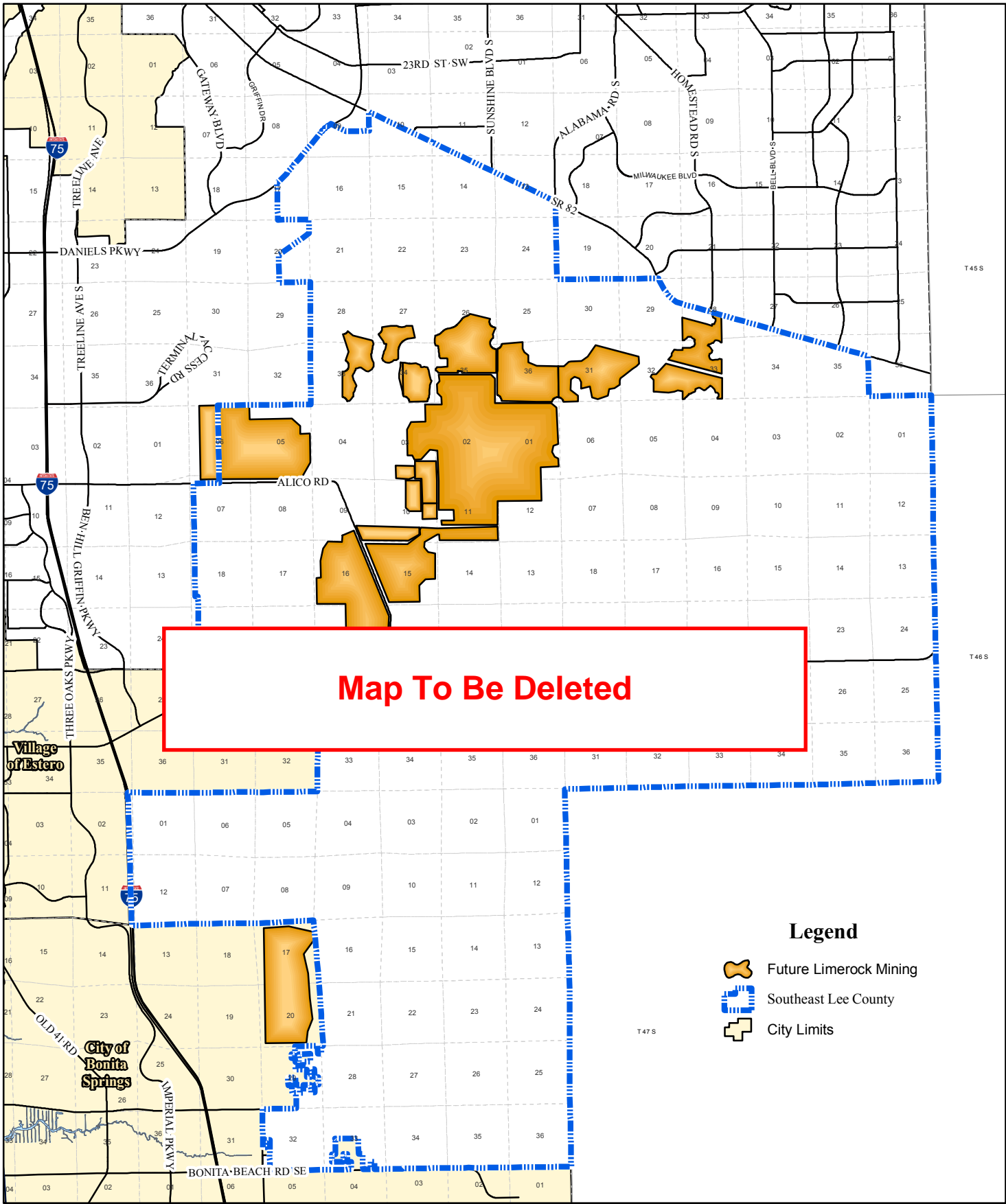
2. Standards for Administrative Interpretations

e. In addition to the above, interpretations for a Minimum Use Determination (MUD) will be determined under the following standards:

(1) – (7): Unchanged.




(8) A property that is 10 or more acres in size with at least 8 acres of land designated as DR/GR and no more than 2 acres of Wetlands, provided that no alterations are made to those wetland areas, may be permitted one single family residence.

- Relocated from Policy 1.4.5.



Map To Be Deleted

Legend

-  Future Limerock Mining
-  Southeast Lee County
-  City Limits



Map Generated: April 2018
 City Limits current to date of map generation

Adopted by Ord 90-43 (9/6/90)
 Amended By: 10-20, 10-43, 17-23



FUTURE LIMEROCK MINING OVERLAY

TABLE 1(b) Year 2030 Allocation

Future Land Use Category		Lee County Totals		Northeast Lee County	Boca Grande	Bonita Springs	Fort Myers Shores	Burnt Store	Cape Coral	Captiva	Fort Myers	Fort Myers Beach	Gateway/Airport	Daniels Parkway	
		Existing	Proposed												
Residential By Future Land Use Category	Intensive Development	1,361	1,361				5		27		250				
	Central Urban	14,766	14,766				225				230				
	Urban Community	17,021	17,021	520	485		637						250		
	Suburban	16,623	16,623				1,810				85				
	Outlying Suburban	3,843	3,843	30			40	20	2	500				1,438	
	Sub-Outlying Suburban	1,955	1,955				547						227		
	Commercial														
	Industrial	79	79									39		20	
	Public Facilities	1	1							1					
	University Community	850	850												
	Destination Resort Mixed Use Water Dependent	8	8												
	Burnt Store Marina Village	4	4						4						
	Industrial Interchange														
	General Interchange	151	151											11	58
	General Commercial Interchange														
	Industrial Commercial Interchange														
	University Village Interchange														
	Mixed Use Interchange														
	New Community	2,100	2,100	1,200										900	
	Airport														
	Tradeport	9	9											9	
	Rural	8,313	8,313	1,948			1,400	636							1,500
	Rural Community Preserve	3,100	3,100												
	Coastal Rural	1,300	1,300												
Outer Island	202	202	5			1			150						
Open Lands	2,805	2,805	250					590						120	
Density Reduction/ Groundwater Resource	6,905	6,905	711										94		
Conservation Lands Upland															
Wetlands															
Conservation Lands Wetland															
Unincorporated County Total Residential		81,396	81,396	4,664	485		4,665	1,250	29	651	604		1,511	3,116	
Commercial		12,793	12,793	177	52		400	50	17	125	150		1,100	440	
Industrial		13,801	6,620	26	3		400	5	26		300		3,100	10	
Non Regulatory Allocations															
Public		82,565	82,565	7,100	421		2,000	7,000	20	1,961	350		7,752	2,477	
Active AG		17,027	24,208	5,100			550	150						20	
Passive AG		43,786	43,786	12,229			2,500	109					1,241	20	
Conservation		81,933	81,933	2,214	611		1,142	3,236	133	1,603	748		2,947	1,733	
Vacant		23,874	23,874	1,953			61	931	34		45		300	151	
Total		357,176	357,176	33,463	1,572		11,718	12,731	259	4,340	2,197		17,951	7,967	
Population Distribution (unincorporated Lee County)		495,000	495,000	9,266	1,531		30,861	3,270	225	530	5,744		18,333	16,375	

TABLE 1(b) Year 2030 Allocation

Future Land Use Category		Iona/ McGregor	San Carlos	Sanibel	South Fort Myers	Pine Island	Lehigh Acres	Southeast Lee County Existing Proposed		North Fort Myers	Buckingham	Estero	Bayshore
Residential By Future Land Use Category	Intensive Development				660	3	42			365		9	
	Central Urban	375	17		3,140		8,179			2,600			
	Urban Community	850	1,000		860	500	11,359				110	450	
	Suburban	2,488	1,975		1,200	675				6,690		1,700	
	Outlying Suburban	377				600				382		454	
	Sub-Outlying Suburban		25							140	66		950
	Commercial												
	Industrial	5	5		10								
	Public Facilities												
	University Community		850										
	Destination Resort Mixed Use Water Dependent	8											
	Burnt Store Marina Village												
	Industrial Interchange												
	General Interchange							15	15	31		6	30
	General Commercial Interchange												
	Industrial Commercial Interchange												
	University Village Interchange												
	Mixed Use Interchange												
	New Community												
	Airport												
	Tradeport												
	Rural		90			190	14			500	50	635	1,350
	Rural Community Preserve										3,100		
	Coastal Rural					1,300							
Outer Island	1				45								
Open Lands									45			1,800	
Density Reduction/ Groundwater Resource							4,000	4,000				2,100	
Conservation Lands Upland													
Wetlands													
Conservation Lands Wetland													
Unincorporated County Total Residential		4,104	3,962		5,870	3,313	19,594	4,015	4,015	10,753	3,326	3,254	6,230
Commercial		1,100	1,944		2,100	226	1,300	68	68	1,687	18	1,700	139
Industrial		320	450		900	64	300	7,246	65	554	5	87	5
Non Regulatory Allocations													
Public		3,550	3,059		3,500	2,100	15,289	12,000	12,000	4,000	1,486	7,000	1,500
Active AG						2,400		7,171	14,352	200	411	125	900
Passive AG						815		17,521	17,521	1,532	3,619	200	4,000
Conservation		9,306	2,969		188	14,767	1,541	31,210	31,210	1,317	336	5,068	864
Vacant		975	594		309	3,781	9,880	470	470	2,060	1,000	800	530
Total		19,355	12,978		12,867	27,466	47,904	79,701	79,701	22,103	10,201	18,234	14,168
Population Distribution (unincorporated Lee County)		34,538	36,963		58,363	13,265	153,011	1,270	1,270	71,001	6,117	25,577	8,760