



CONSERVANCY
Of Southwest Florida

Corkscrew Rural Community

Estero Citizens Association



Responsible Growth Management Coalition, Inc.

December 10, 2009

Mr. Ray Eubanks
Plan Process Administrator
Division of Community Planning
2555 Shumard Oak Blvd.
Tallahassee FL 32399

RE: CPA 2008-06 Proposed Lee Plan Amendments for Southeast Lee
County's Density Reduction/Groundwater Resource Area

Dear Mr. Eubanks:

As participating stakeholders in the Lee County Density Reduction/Groundwater Resource (DRGR) area review, the Conservancy of Southwest Florida, Corkscrew Rural Community, Estero Citizens Association, Estero Council of Community Leaders and Responsible Growth Management Coalition support the majority of the transmitted DR/GR amendments. Countless technical reports and data sources were utilized in the creation of the DR/GR amendments, resulting in a proposed overlay that is comprehensive, data-driven, equitable and defensible. The amendments before you create a DR/GR overlay that will protect drinking

water sources and allow agriculture to continue, while directing mining and residential development to appropriate locations. Our organizations do have several concerns regarding specific amendment policies as transmitted. Therefore, we request the Department of Community Affairs (DCA) find the DR/GR overlay in compliance, taking into consideration our recommendations on several key issues, which we will elaborate below.

DR/GR Background

The importance of the 82,560 acres of the Southeast Lee County DR/GR extends well beyond its physical boundaries. This is the water storage and protection area for the region, with a number of current and future public wells located within its boundaries. In fact, Lee County Utilities obtains approximately 70% of its potable water supply from the DR/GR. Portions of the Corkscrew Regional Ecosystem Watershed (CREW) are within the DR/GR, and it is adjacent to the Corkscrew Swamp. Wetland systems essential not only to water supply but also to water quality within our estuaries (including Estero Bay) are located in the DR/GR, and it is an important area for listed species, containing habitat for the endangered Florida panther and wood stork.

The significance of this area was recognized by both the DCA and Lee County through the 1990 DR/GR designation, acknowledging this land's importance for reducing density in order to protect water recharge. The allowable land uses were limited to residential at one unit per 10 acres, agriculture, conservation, recreation and mining (with an approved rezone). While this mix of uses seemed feasible at the time, the reality is that significant incompatibility was created, especially by allowing mining in close proximity to water resources and rural residential communities. The DR/GR was further threatened by the piecemeal approval of Comprehensive Plan amendments that diminished its size and allowed significant increases in intensity of use on former DR/GR lands.

The need to revisit the DR/GR policies is not a new concept. In 2003, the Lee County Smart Growth Committee recommended a comprehensive review of the DR/GR. However, it was the extensive applications for new mines that became the catalyst to compel this review. In fact, as of April 2009, there were new mine applications that covered more than 17,000 acres of DR/GR land, so this review was extremely timely.

In 2007, Lee County Commissioners initiated a comprehensive study, with the McLane Report being the first work product to come from this effort. The McLane Report confirmed that the DR/GR is important not only for density reduction and groundwater recharge, but also because of its ecological resources, hydrologic features and as an extensive, interconnected mosaic of habitats. From this, the Commission placed a moratorium on rezones for mining and Comprehensive Plan amendments, and they appointed a committee, on

which several of our organizations served, to work with County staff and the County's consultants on a new plan for protection of the DR/GR.

In drafting the amendments, Lee County was cognizant of their obligation to balance the needs of the environment, public water supply and private property rights. This balance of use resulted in the creation of four key elements that, taken together, will protect the DR/GR while allowing appropriate and compatible activities. These elements are:

Future Limerock Mining Overlay

New mines will be located within the Alico Road corridor, separated from other land uses. This will tremendously reduce negative impacts to groundwater recharge, conservation and existing residential uses within the remainder of the DR/GR.

Historic Surface and Groundwater Levels Overlay

Water resources will be protected through ensuring that new development mimics surface and groundwater levels from the established historic date of 1953.

Priority Restoration Overlay

Lands important for future conservation, restoration and/or acquisition will be identified and prioritized.

Transfer of Development Rights Program

Residential development can be transferred from environmentally-sensitive areas to more appropriate locations where sustainable mixed-use development will be allowed.

Inclusion of these components, contained within the proposed amendments and supported by data, science and sound planning principles, ensure compliance with F.S. 163.3177(8), which states, in part,

All elements of the comprehensive plan, whether mandatory or optional, shall be based upon data appropriate to the element involved.

Additionally, the amendments are also consistent with F.S. 163.3177(1), which states,

The comprehensive plan shall consist of materials in such descriptive form, written or graphic, as may be appropriate to the prescription of principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.

The hallmark of the DR/GR study effort has, from the beginning, been an open, public process with ample opportunity for all stakeholders to provide data and input every step of the way. In addition to the 23 meetings of the DR/GR advisory committee, all of which were publically noticed and received substantial public input, there have been at least 11 workshop and public hearings. The DR/GR amendments were also based upon numerous reference sources, including:

- *Strategic Mining: A Report on Mining in Lee County*
- *Lee County Master Mitigation Plan: Environmental Quality Investment and Growth Mitigation Strategic Plan*
- *Lee County Groundwater Resource and Mining Study*
- *Southwest Florida Feasibility Study*
- *Toward a Greener Lee: Effective Planning Alternatives for Rural Lee County*
- *Review and Summary of Studies Containing Information Relating to Density Reduction/Groundwater Resource (DR/GR) Lands Southeastern Lee County, Florida*
- *Strategic Aggregates Review Task Force Final Report*
- *Growth Management Regulations, Public Investment and Resource Implications for the Estero Bay Watershed*
- *Prospects for Southeast Lee County: Planning for the Density Reduction/Groundwater Resource Area (DR/GR)*
- *Ecological Memorandum of the Density Reduction/Groundwater Resource Area (DR/GR)*
- *Transferable Development Rights in Southeast Lee County*
- *Natural Resource Strategies for Southeast Lee County*
- *Comprehensive Hydrological Study of the Lee County's Southeastern Density Reduction/Groundwater Resource Area*

Adding to the above resources, a tremendous amount of information was submitted by the public on all aspects of the DR/GR. Thus, the DR/GR overlay, as proposed for inclusion within the Future Land Use Element (FLUE) and Future Land Use Map (FLUM), is supported by a tremendous amount of research and data, in accordance with State law and supportable planning principles.

Based upon the open and transparent nature of the DR/GR review process and the diligent work of County staff and their consultants, participation in the DR/GR process included a broad base of stakeholders and interested parties. From the beginning, a large coalition of individuals and organizations has been vocal in their support for Lee County staff's recommendations. These 14 organizations, including the organizations represented in this letter, signed on to a joint position statement indicating support for a number of the staff recommendations and also making recommendations on several points where we believe modifications to the staff recommendations should occur.

Key Elements of the DR/GR Amendments Supported by Our Organizations

Creation of the Future Limerock Mining Overlay

[Objective 30.1 and its implementing policies; Goal 10, Objective 10.1 and 10.2 and their implementing policies; Map 14, Including Area B in the Amended Map 14, which Contains the Eastern 240 Acres of the Galvano Property]

Our organizations strongly support the designation of Map 14 (Future Limerock Mining overlay), and the applicable policies, including those created in Objective 30.1 and Goal 10 of the FLUE. These policies and the accompanying map provide a well-defined process to direct future mining to locations where the extraction of aggregate will not result in incompatibility with groundwater recharge, conservation and existing residential uses and with access to existing roads and infrastructure capable of handling industrial traffic.

A significant part of the DR/GR planning process included a thorough review of the current amount of limerock mined to date, the amount of mining permitted but not actively mined and the amount of limerock needed to fulfill Lee County's obligation for supply to the County and region through 2030. Detailed results are included within the County's *Prospects for Southeast Lee County* report and the numbers are conclusive. According to 2006 data, 3,597 acres of limerock have been mined and another 3,576 acres have been approved for resource extraction. To meet both County and regional needs through the planning horizon year of 2030, an additional 821 acres will need to be converted to mining.

In order to accommodate this additional acreage, Lee County's consultants, Dover Kohl, proposed amendments that identified almost 4 ½ times the necessary amount of land – 3,707 acres – deemed appropriate for the location of new mines. Initial feedback from landowners and other stakeholders revealed concern about portions of the Tradeport area being included within the Future Limerock Mining overlay. In response, staff has removed Tradeport from the map while adding lands in other areas along the Alico corridor. However, based upon a request from the owners of the Galvano property, this portion of the Tradeport area has been reinserted into the Future Limerock Mining overlay. We support this reinsertion. The acreage for future mines included in staff's recommendation greatly exceeds the 821 acres required to meet the County and region's needs through 2030, and the 240 acres of the Galvano property could supply more than a quarter of this future aggregate demand.

Our organizations believe staff's recommendation for Map 14 and the applicable Lee Plan policy amendments are appropriate mechanisms to allow aggregate mining, while protecting other resources and land uses within the DR/GR from negative impacts. This specificity also provides assurances for landowners that the approval process for mining in these locations will be less cumbersome.

We also support the inclusion of the total acreage of allowable mines as part of the Future Land Use Map Table 1(b) "Industrial" category. Such inclusion will eliminate the potential for application submittals that exceed local and regional need within the 2030 planning horizon.

Creation of the Historic Surface and Groundwater Levels Overlay

[FLUE Policies 1.4.5 and 1.7.14; Map 24]

The Lee Plan currently requires all land uses within the DR/GR to be compatible with "maintaining surface and groundwater levels at their historic level" (current FLUE Policy 1.4.5). The difficulty in applying this policy is due to subjectivity in defining "historic levels" and implementation has been hindered because no specific date for "historic" has been established. The proposed addition to this policy would establish 1953 as the benchmark for "historic" and Map 24 specifically delineates the surface and groundwater levels at this date. This benchmark is based upon evaluation of 1953 aerial photographs, which specify the conditions of the DR/GR prior to intensive manmade impacts to the land. The proposed language for Policy 1.4.5.1 and 1.7.14, in addition to Map 24, will provide consistent guidelines for landowners as they determine appropriate uses for their property.

In response to the initial draft language for Policy 1.4.5, Lee County has received feedback from several stakeholders requesting additional specificity be included regarding the applicability and practicality of this requirement. In response to concerns received, staff has revised the proposed language in Policy 1.4.5.1 to add this specificity and clarity. These clarifications address many of the concerns raised regarding this new policy by including language that indicates the policy will be applied to new land uses requiring rezoning or a development order and that modeling must demonstrate no adverse impacts offsite.

The language also allows flexibility by including the ability for an applicant to submit additional information regarding the historic levels as part of the rezone or development review process. In addition, staff has agreed to continue to refine the language in this policy prior to adoption, to ensure there are no unintended consequences. This should provide the necessary level of assurance by all parties that the resulting language will provide for resource protection, while allowing reasonable use of property.

Creation of the Priority Restoration Overlay

[FLUE Objective 30.2 and its implementing policies; Map 25 (to be replaced by Page 4 of Map 1)]

Our organizations support proposed FLUE Objective 30.2 and its accompanying policies establishing the DR/GR Priority Restoration overlay and the accompanying Map 25. We believe that the concept of identifying these lands for potential future conservation, restoration and/or acquisition is an important

planning tool, along with the prioritization given within Map 25, which is based upon the data collected and analyzed within Kevin L. Erwin Consulting Ecologists, Inc. *Ecological Memorandum of the Density Reduction/Groundwater Resource Area (DR/GR)*. These restoration areas coincide with both currently established public acquisition boundaries, and lands that will provide additional environmental benefit and connectivity with public lands. This overlay is an integral component of the DR/GR overlay and we request that it remain as currently proposed.

In addition, as implementation of the DR/GR amendments proceeds, specific policies to provide meaningful incentives for conservation, acquisition and restoration of these lands will be essential. We will continue to provide input and participate in the LDC process, where such specifics can be determined.

Creation of a Transfer of Development Rights (TDR) Program Directing Mixed-Use Development to Appropriate Locations

[FLUE Policy 1.7.13; Objective 30.3 and its implementing policies; Map 17 with the removal of a Rural Community at Edison Farms]

Both Dover Kohl and County staff have recommended creating Mixed-Use Communities, incorporating residential and commercial components, primarily along the SR82 corridor immediately adjacent to the Lehigh Acres area. We support the creation of these Mixed-Use Communities through a TDR program as a mechanism to protect wetlands and listed species, preserve agriculture and direct residential development to appropriate locations. While the specific mechanisms for implementing the TDR program will be refined through an upcoming LDC cycle, the framework for the program has been provided in the proposed Lee Plan amendments.

Our organizations also support directing development to the SR82 corridor, as proposed by staff in Map 17. By designating specific areas for future Mixed-Use Communities, Lee County will have the opportunity to plan for necessary road improvements and expansions to accommodate these compact developments. The Lee County staff report acknowledges the challenges inherent in pursuing additional development along the SR82 corridor. However, as the County is beginning the 2035 Long Range Transportation Plan update process, designation of these development nodes will allow Lee County to focus future transportation dollars to these roads that correspond to future planned development. As land use and transportation planning should work in tandem, this will be an ideal opportunity to provide synergy between appropriate locations for future development and funding for needed road projects.

The positive impact of these Mixed-Use Communities must also be factored in. These development nodes will provide for commercial, office and retail needs for both Lehigh Acres and the residential components of the new communities. If designed properly, these Mixed-Use Communities will result in walkable and

sustainable developments that impact arterial roads to a lesser extent than the traditional residential-only developments. This fact, combined with a commitment by Lee County to pursue innovative transit solutions, makes SR82 an acceptable location for future Mixed-Use Communities.

In addition, specifying an upper limit for future residential units gained through the TDR program is critical. We had initially supported the establishment of a 6,000 residential unit limit as the maximum allowed for TDR transfer within the DR/GR, with the remainder of the 14,358 TDR credits to be available for transfer outside the DR/GR. However, we believe the new proposed maximum of 9,000 residential units is an acceptable limit of DR/GR development, as long as any increase in density above the baseline is tied to additional environmental benefits.

Alternative Recommendations for Consideration by DCA on Specific Policies

Removal of a Future Rural Community at Edison Farms

[Map 17]

Within Objective 3.3 and Map 17, Dover Kohl has provided both the mechanism for a TDR program that allows density to be moved to Mixed-Use Communities, and the ability for large landowners to cluster their allowed density onsite to a smaller development footprint. These clustered developments are referred to as Rural Communities.

Generally speaking, the establishment of a viable TDR program allows landowners to transfer density from more sensitive lands to areas appropriate for development. This provides a scientific basis for determination of both sending and receiving lands. However, the establishment of a Rural Community at Edison Farms, as proposed by Dover Kohl, is based not upon the environmental value of the lands, but on the desire to allow each large landowner a clustered residential development.

Initially, County staff opposed a Rural Community on the Edison Farms site, and our organizations strongly supported that position. Unfortunately, during the final day of the transmittal hearing, staff agreed to explore the ability to have a Rural Community somewhere on the Edison Farm site. Our organizations strongly oppose this proposal, and we ask DCA to object to inclusion of this site for clustered development. Our position that Edison Farms should be removed is based upon a number of key factors.

First, allowing development on the Edison Farms site is inconsistent with the proposed Priority Restoration overlay, as detailed in FLUE Objective 30.2 and its implementing policies and depicted on Map 25 (See Attachment 1). The environmental sensitivity of this site is acknowledged through the County's

classification of the entire Edison Farm property as Tier 1 Priority Restoration. The inclusion of this land as Tier 1 is based upon its location within CREW, its status as primary panther habitat, its importance as a wood stork foraging area and the amount of wetlands it contains (See Attachment 2).

Dover Kohl's recommended location focused the development footprint in the only upland portion of the site. While it is unrealistic to expect that development impacts would be confined to those uplands, Lee County Commissioners are asking that the development footprint be flexible and movable, thus increasing the potential for direct impacts to wetlands. This site is simply inappropriate for development. The Priority Restoration Map 25 indicates this by including all of the site as Tier 1 priority. Placement of a Rural or Mixed-Use Community on Edison Farms is inconsistent with the intent of proposed Objective 30.2 and Map 25, along with being inconsistent with natural resource protection.

Second, all of the other proposed sites for Rural or Mixed-Use Communities are located along existing travel corridors and are in locations where development will logically expand. However, the Edison Farms site is unique in its complete lack of infrastructure – roads, water and sewer (See Attachment 3). As the aerial on Attachment 3 indicates, the 4,000 acres of Edison Farms is heavily vegetation, with about 90% of the site containing intact wetlands. The most visible impact to the site is the maintained Florida Power and Light easement crossing the eastern portion of the land. The only access is from a small, dirt road to the south. There is no interstate access, and no such access is planned in the future.

Dover Kohl recommended a Rural Community here based partly upon the fact that if CR951 were extended north in the future from Collier County, the alignment could traverse the Edison Farms property. However, the probability of this road ever being built is unlikely, due to significant environmental constraints and the questionable financial feasibility of the road. While Lee County does include the \$795 million CR951 extension within the 2030 Long Range Transportation Plan, it is contingent upon the road being tolled, which would be problematic and may conflict with future tolling of I-75.

In fact, the Board of County Commissioners this month decided to no longer pursue the CR951 extension and to cease work on the NEPA process. While the Commission did not give direction to staff to remove CR951 from the 2035 Long Range Transportation Plan update, it will be nothing more than a line on a map, as the County is no longer moving forward with the project. With no current infrastructure – roads, water and sewer, this is clearly not a site where clustered development could appropriately be directed. We ask DCA to object to a Rural or Mixed-Use Community on the Edison Farms site.

Strengthen FLUE Policy 1.4.5.2.c by Adding Language that Requires Density from Mine Pits be Extinguished and Density from Remaining Mine Acreage be Extinguished or Transferred to a Mixed-Use Community

[FLUE Policy 1.4.5.2.c and Policy 30.1.3]

Dover Kohl acknowledged the need to establish a policy to determine how density of mined lands will be addressed. Their suggestion, within their proposed FLUE Policy 1.4.5.2.c, is to either extinguish residential density or transfer it to a “receiving” property designated by the TDR program. Staff has recommended that this language be struck and that post-mining uses be dealt with under Chapter 12 of the Land Development Code (LDC). Our organizations believe that while the LDC is the appropriate place to work through specific post-mine design standards, the Lee Plan is the necessary location to establish policy that either allows or denies residential land use after a mine is closed.

We recommend that Policy 1.4.5.2.c be reworded to state:

Residential density of mined land will be extinguished unless it is transferred to an eligible property in accordance with Policy 30.3.3.

The benefit of this language is threefold. First, it removed any ambiguity as to whether housing will be allowed on a former mine site. This is far superior to trying to negotiate such future uses on a case-by-case basis through application of LDC Chapter 12. Second, as Lee County should encourage maximum extraction of limerock within the Future Limerock Mining overlay, this policy will further such a goal by removing the ability of a landowner to prematurely close a mine and turn the site into a subdivision. Third, the intent of designating the Future Limerock Mining overlay is to establish an area where mining is allowed, while minimizing impacts to existing and future residential land use. If pits within this overlay are allowed to retain any residential density, the result will be homes around prematurely closed mines that are adjacent to active mines. This creates noise, traffic and quality of life incompatibility that we ask you to remedy by including our proposed language.

Restrict Fill Dirt Pits Within the DR/GR to the Allowed Mining Areas of Map 14, the Future Limerock Mining Overlay

[Policy 30.1.5]

While the guidelines for the locations of new limerock mines are very specific in the proposed DR/GR amendments, regulations regarding fill dirt pits are much more ambiguous. The currently proposed Policy 30.1.5 states, in part:

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.

From the standpoint of impacts to the surface – vegetation removal, noise pollution and truck traffic – the impacts of any kind of mine are similar. And, as dirt mines can be the first step in a landowner's request to dig deeper, the only location within the DR/GR that will be acceptable for such use is within the Future Limerock Mining overlay. We recommend the following language replace the current applicable portion of Policy 30.1.5:

Shallow mines that produce fill dirt within the DR/GR will be confined to those lands included within the "Future Limerock Mining" overlay as depicted on Map 14.

Include Language that Requires Minimum Standards for Zoning or Development Order Approvals for Mines and for All Required Monitoring Reports

[FLUE Policies 10.2.6 and 10.2.7]

The amendments contain proposed language within Policies 10.2.6 and 10.2.7 regarding natural resource extraction. Policy 10.2.6 states:

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

This is an extremely important policy because it establishes what, at a minimum, should be included in the monitoring reports. However, because the second sentence states that the reports "may" include these critical components, there is no assurance that such information will be included. The only items that are certain to be included are those listed in the last sentence, where "will" provides such a definitive requirement.

We recommend that the second sentence of Policy 10.2.6 be rewritten to begin:

These reports will include surface and groundwater....

We have the same concern regarding Policy 10.2.7, which is currently drafted to state:

*Zoning or development order approval **may**[emphasis added] require that significant adverse impacts identified during mining or post-mining will be*

subject to adaptive resource management whereby corrective measures can be guaranteed through conditions on the next phase's approval.

We recommend that this policy also be strengthened to begin:

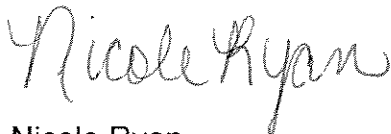
Zoning or development order approval will require....

With the inclusion of these recommended changes we support these policies and believe they will ensure that future mining provides necessary data to help achieve environmental compatibility.

Conclusion

Our organizations request that these comments be part of your consideration as you review of the DR/GR Lee Plan amendments. We support these amendments, with the limited areas of disagreement discussed above, and we ask that you find the DR/GR overlay consistent with State law and sound planning principles. It is our opinion that these amendments are likely the County's last and best chance to provide a meaningful framework for planning the future of Southeast Lee County. If you have any questions, please contact Nicole Ryan at (239) 403-4220.

Sincerely,



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Attachments