

**Talking Points for DR/GR Comp Plan Testimony
Lee County LDC...June 22, 2009**

The undersigned organizations strongly support the framework for Density Reduction/Groundwater Resource (DR/GR) area comprehensive plan amendments as drafted by Dover Kohl and modified by Lee County staff (staff). Our coalition of stakeholders, representing diverse perspectives, offers our support for specific key elements included within the proposed amendments, and we ask that you recommend their approval to the Board of County Commissioners (BOCC). We are also suggesting additional language that will provide further structure to this DR/GR plan.

The DR/GR planning effort officially commenced with the release of the McLane Report in May 2007 and since that time has involved all stakeholders and interested parties, including environmental organizations, civic groups, landowners and mining interests. Over a two-year period, there were 23 official DR/GR advisory committee meetings and no less than 9 public hearings to solicit input on DR/GR planning. 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. These amendments are proceeding based upon the BOCC-required timeframe for transmittal within this year's growth management plan amendment cycle. Our organizations also support transmittal of these amendments in September, and ask that you preserve this timeline and recommend approval to the BOCC, with consideration of the following:

1. Support Staff's Recommendation for Future Land Use Element (FLUE) Policies 30.1, Goal 10 and Map 14, Creating a Future Limerock Mining Overlay
2. Support Dover Kohl and Staff's Definition of Historic Levels for Surface and Groundwater Within FLUE Policy 1.4.5 and Map 24
3. Support Staff's Recommendation to Remove Rural Community Designation from the Edison Farms Site Within the Dover Kohl Report Figure 3 and Recommend Further Review of the Feasibility for the Rural Communities Designation Within FLUE Objective 3.3
4. Recommend Density from Mine Pits be Extinguished and Density from Remaining Mine Acreage be Extinguished or Transferred to a Mixed-Use Community Within FLUE Policy 1.4.5.2.c
5. Recommend Restricting Fill Dirt Pits Within the DR/GR to the Allowed Mining Areas of May 14, the Future Limerock Mining Overlay
6. Acknowledge Lee County's Obligation to Apply the Lee Plan's Wetlands Goal, Objectives and Policies by Deletion of Conservation and Coastal Management Element (CCME) Policy 114.1.2.1

7. Support Inclusion of Mixed-Use Communities along SR82 and Incorporate the Designation Within the 2035 Long Range Transportation Planning Process
8. Support the Priority Restoration Overlay as Designated Within the FLUE Policy 30.2 and Map 25
9. Recommend Inclusion of Language that Requires Minimum Standards for Zoning or Development Order Approvals for Mines and for All Required Monitoring Reports Within FLUE Policies 10.2.6 and 10.2.7

These amendments may be the County's last and best chance to provide a meaningful framework for planning the future of the DR/GR. We ask that you forward these amendments, incorporating the above suggestions, to the BOCC for transmittal in September.

Conservancy of Southwest Florida
Estero Council of Community Leaders
Brooks Concerned Citizens

Additional Background to Support Our Recommendations

1. Support Staff's Recommendation for Future Land Use Element (FLUE) Policies 30.1 and Goal 10 and Map 14, Creating a Future Limerock Mining Overlay

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.

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, Dover Kohl's proposed amendments have 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. While it is unclear the exact acreage for future mines included in staff's recommendation, it greatly exceeds the 821 acres required to meet the County and region's needs through 2030. In the unlikely event that the Future Mining Area needs to be expanded prior to 2030 the Plan provides for the BOCC to review the demand for limerock mining in southwest Florida every seven years and use that information to amend the boundaries of the Future Mining Area.

Our organizations support staff's recommendation for Map 14 and the applicable Lee Plan policy amendments. We believe these 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.

2. Support Dover Kohl and Staff's Definition of Historic Levels for Surface and Groundwater Within FLUE Policy 1.4.5 and 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" (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. 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. Our organizations support inclusion of these policy and Map 24 as proposed by Dover Kohl and staff.

3. Support Staff's Recommendation to Remove Rural Community Designation from the Edison Farms Site Within the Dover Kohl Report Figure 3 and Recommend Further Review of the Feasibility for the Rural Communities Designation Within FLUE Objective 3.3

Within Objective 3.3 and Figure 3 of their report, Dover Kohl has provided both the mechanism for a Transfer of Development Rights (TDR) program that allows density to be moved from one site to another, and the ability for large landowners to cluster their allowed density onsite to a smaller development footprint. This clustered development is referred to as Rural Communities.

While our organizations support TDRs for the DR/GR, we are concerned about the number of proposed Rural Communities and the lack of specific criteria used to determine appropriate locations for this designation. 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 these Rural Communities is based not upon the environmental value of the lands, but on the desire to allow each large landowner a clustered residential development.

We support staff's recommendation that the designation of a Rural Community on the Edison Farms site should be removed, based upon that site's location within the Corkscrew Regional Ecosystem Watershed (CREW), its status as primary panther habitat, the amount of wetlands it contains and the lack of infrastructure – roads, water and sewer. This is clearly not a site where clustered development could appropriately

be directed. In addition, we ask that you also consider removal of the proposed clustered development at the southwest corner of the Ginn property, as this land is also primary panther habitat and is not served by any direct road access.

Finally, we ask that an overall assessment of the costs and benefits of the entire Rural Communities designation be conducted to determine if it is practical to have this category or whether utilization of these lands to generate TDRs to transfer to the proposed Mixed-Use Communities would provide greater benefit.

4. Recommend Density from Mine Pits be Extinguished and Density from Remaining Mine Acreage be Extinguished or Transferred to a Mixed-Use Community Within FLUE Policy 1.4.5.2.c

Dover Kohl acknowledged the need to establish a policy to determine how density of mined lands will be addressed. Their suggestion, within proposed FLUE Policy 1.4.5.2.c is to either extinguish residential density or transfer it to a property eligible through 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 for the acreage where mine pits have been dug. For all other acreage within the mine boundaries, residential density 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 removes 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.

5. Recommend Restricting Fill Dirt Pits Within the DR/GR to the Allowed Mining Areas of May 14, the Future Limerock Mining Overlay

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 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.

Fill mines in the Future Mining Area are sufficient to supply all nearby development needs and this provision would encourage fill mine dispersal as called for by Policy 30.1.5.

6. Acknowledge Lee County’s Obligation to Apply the Lee Plan’s Wetlands Goal, Objectives and Policies by Deletion of Conservation and Coastal Management Element (CCME) Policy 114.1.2.1

Our organizations support the deletion of CCME Policy 114.1.2.1, which states:

In accordance with F.S. 163.3184(6)(c), the county will not undertake an independent review of the impacts of wetlands resulting from development in wetlands that is specifically authorized by a DEP or SFWMD dredge and fill permit or exemption.

As the Dover Kohl report indicates, this citation of Florida Statutes is in reference to the adoption and amendment of Comprehensive Plans. It in no way limits Lee County from a review of projects that propose to impact wetlands, nor does it allow the County to abdicate authority to determine if wetland impacts are consistent with the goals, objectives and policies of the Lee Plan. Agencies review wetland permits based upon a project’s consistency with specific agency guidelines, and agencies will not review a project for consistency with Lee County regulations. That is the responsibility of the County, and the only way to ensure consistency with the Lee Plan if for the County to do such a review.

The bottom line is that if Lee County had no authority or obligation to review projects for consistency with county-specific wetland policies, there would be no Goal 114. However, Goal 114 exists, and Lee County currently has a number of wetland policies, including Policy 114.1.1, which states:

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 wetlands functions.

The Dover Kohl report correctly points out that adherence to this language would preclude mining anywhere that wetlands would be impacted. However, in order to provide the ability for mining to occur within the Future Limerock Mining overlay, additional language has been proposed that would allow impacts to specific wetlands, with appropriate mitigation. This will allow mining to occur consistent with the Lee Plan in the locations where, based on a variety of natural resource and land planning factors, it is most appropriate.

The removal of Policy 114.1.2.1 will not result in duplication or any new regulation. Lee County already has the authority and the obligation to protect County wetlands and striking this language will simply reinforce this existing requirement. We support deletion of Policy 114.1.2.1.

7. Support Inclusion of Mixed-Use Communities along SR82 and Incorporate the Designation Within the 2035 Long Range Transportation Planning Process

Both Dover Kohl and staff have recommended creating Mixed-Use Communities, incorporating residential and commercial components, along the SR82 corridor within the Lehigh Acres area. Our organizations 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 many of the specific components of the TDR program will be refined through the upcoming TDR study due for release shortly, the information provided in these amendments serves as a framework for future LDC implementation language.

We also support directing development to the SR82 corridor, as proposed by Dover Kohl in the Figure 3 Rural Residential overlay map. 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. As the County is beginning the 2035 Long Range Transportation Planning process, designation of these development nodes will allow Lee County to focus future transportation dollars to these roads that correspond to future planned development.

8. Support Designation of the Priority Restoration Overlay as Designated Within the FLUE Policy 30.2 and Map 25

Our organizations support proposed FLUE Policy 30.2.2, establishing the DR/GR Priority Restoration overlay and the accompanying Map 25. We believe that the concept of identifying these lands for potential future 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 proposed DR/GR plan 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 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.

9. Recommend Inclusion of Language that Requires Minimum Standards for Zoning or Development Order Approvals for Mines and for All Required Monitoring Reports Within FLUE Policies 10.2.6 and 10.2.7

The Dover Kohl report recommends the addition of 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 ensure environmental compatibility.