



**LOCAL PLANNING AGENCY
ADMINISTRATION EAST BUILDING
2201 SECOND STREET, FORT MYERS, FL 33901
ROOM 118 (FIRST FLOOR)
MONDAY, JANUARY 28, 2019
8:30 AM**

AGENDA

1. Call to Order/Review of Affidavit of Publication/Pledge of Allegiance
2. Election of Officers
3. Public Forum
4. Approval of Minutes – December 17, 2018
5. Lee Plan Amendment
 - A. CPA2018-10014 Limerock Mining: Amend Lee Plan Goals 1, 9, 10, 33, and 114, Chapter XIII, 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.
6. Land Development Code Amendments
 - A. Amendments to Chapter 12 for Mining Activities
 - Establish public meeting requirements
 - Increase minimum setback for residential uses for MEPDs
 - B. General Clean-up to Chapters 6, 10, 14, and 34
 - Reduces redundancy/conflict
 - Reorganization to enhance ease of use
 - Updates cross references
7. Other Business
8. Adjournment – Next Meeting Date: February 25, 2019

Documentation for the Proposed Comprehensive Plan Amendment is available at <https://www.leegov.com/dcd/planning/cpa>. 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.

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**MINUTES REPORT
LOCAL PLANNING AGENCY
DECEMBER 17, 2018**

MEMBERS PRESENT:

Dennis Church (Chair)
Frank Feeney
James Ink
Kristine Smale

Stan Stouder (Vice Chair)
Justin Thibaut
Henry Zuba

STAFF PRESENT:

Nathan Beals, Utilities
Kalyani Bhutada, Planning
Dirk Danley, Jr., Zoning
Brandon Dunn, Planning
Audra Ennis, Zoning Manager
Andy Getch, Infrastructure Planning
Michael Jacob, Deputy County Attorney

Sharon Jenkins-Owen, Planning
Michael Laskowski, Planning
Dave Loveland, DCD Director
Doug Meurer, Assistant County Mgr.
Janet Miller, Recording Secretary
Mikki Rozdolski, Planning Manager
Becky Sweigert, Planning

Agenda Item 1 – Call to Order, Review of Affidavit of Publication/Pledge of Allegiance

Mr. Jacob, Deputy County Attorney, certified the affidavit of publication and stated it was legally sufficient as to form and content.

Agenda Item 2 – Public Forum - None

Agenda Item 3 – Approval of Minutes – November 5, 2018

Mr. Ink made a motion to approve the November 5, 2018 LPA meeting minutes, seconded by Mr. Feeney. The motion was called and passed 7-0.

For the audio recordings for today's meeting, type in the following link.

<http://www.leegov.com/dcd/committees/committeesearch>

Agenda Item 4 – Lee Plan Amendment

A. CPA2018-00002 - Alico Crossing

Mr. Dan DeLisi, Land Use Planner and representative for the applicant, gave an overview of the project along with a PowerPoint presentation. He stated that Justin Thompson, engineer for the project, and Neale Montgomery from Pavese Law Firm were also in attendance.

Mr. Dirk Danley, Jr. reviewed the staff report and recommendations along with a PowerPoint presentation.

Mr. Zuba referred to a portion of the presentation that dealt with the Level of Service (LOS) traffic impact where the term "inconsequential" was used. Given the fact that all of the studies show the current level of service as an "F," which is the worst category, he did not see how additional traffic could be inconsequential. Mr. Danley, Jr. stated that the level of service is going to be at the current grade

regardless of the “Tradeport” future land use or the “University Village Interchange” future land use. The size of the property and amount of development that has a potential for development on that small piece of property would not have a significant impact to the future of the level of service of the road.

Mr. Zuba asked for clarity that no new curb cuts would be added. Mr. DeLisi stated that curb cuts were a zoning issue. However, since this is developed as part of an overall MPD, these parcels will not have any additional curb cuts because the access points are already in existence within the overall development.

Mr. Church stated that the delta between what would be approved under the current Comprehensive Plan and this new use (the incremental delta in trips) is really inconsequential in terms of as a fraction of a percentage of what is taking place on that roadway.

Mr. Church opened this item for public comment. No members of the public wished to comment, so the public comment segment was closed.

Mr. Church stated for the record that this proposed project is a small scale amendment and, as such, it will not be sent to the Department of Economic Opportunity in Tallahassee nor will there be a transmittal hearing. It will become a Board action to adopt.

Mr. Stouder made a motion to recommend that the Board of County Commissioners adopt CPA2018-00002 Alico Crossing, seconded by Ms. Smale. The motion was called and passed 7-0.

B. CPA2018-00004 - Portico

Mr. Thibaut announced that he had a voting conflict for this item and abstained from voting. He submitted Form 8B to staff for the record.

Ms. Tina Ekblad from Morris-Depew gave an overview of the project along with a PowerPoint presentation.

Mr. Stephen Leung from David Plummer and Associates reviewed the traffic analysis for the project as part of the PowerPoint presentation.

Mr. Church stated he had an MPO question. He asked if the roads segments that this project impacts were already failing. The sentiment seems to be that it is not this project’s fault, so they cannot be held accountable. Mr. Leung stated that was correct, but that the actual remedies are already in place.

Mr. Church acknowledged that the remedies were in the plan, but he asked if they were funded. Mr. Leung stated they were not funded but that it is a priority that the MPO will need to establish, which is why they went through the process of the MPO and long range plans. The first step is the “Needs Plan.” Without the “Needs Plan,” it does not get filtered down to prioritization of actually getting these facilities funded.

Mr. Church referred to the Planned Development process and asked if there was typically a proportionate share agreement that would occur that would pipeline the impact fees to fix some of the remedies. Mr. Leung stated that as they proceed to the zoning phase and address concurrency, they will be looking at the traffic impacts coincident with the buildout of the project (which is within the next 5 years) as opposed to the long range plan which goes to 2040.

Mr. Church asked if they had done the math on what the 500 plus units generates in impact fees. Mr. Leung stated it was approximately five million dollars. One advantage is that there are no additional improvements attributed to this comprehensive plan amendment plus there is an additional five million dollars in impact fees to put towards the improvements within the community.

Ms. Tina Ekblad from Morris-Depew reviewed how the requested amendment is consistent with the Lee Plan as part of the PowerPoint presentation.

Mr. Ink stated that he believed Ms. Ekblad said as part of her presentation that the platted roadways will not change, which would make sense. However, he also thought she said that if they increase the density or have the ability to increase the density, the lot width does not change in the northwest part of the project. He referred to the two areas where there are four existing sub-communities of which one does not have any residents while the other three are encumbered with some existing lots. He asked where they would be proposing to add density or where they would add density in that specific area (the west half of the project). Ms. Ekblad stated they were not proposing to change the plat in that area. The development pattern will stay the same, but the lot size would enable them to add units in the section, which is not platted.

Mr. Ink asked for clarification if her statement meant that they were going to put the extra 500 units in the eastern portion of the project. Ms. Ekblad stated they may potentially do that. Their minimum is 50 feet wide. They do not know yet how many units will be 50 feet wide versus 65 feet wide.

Mr. Ink referred to the largest existing sub-community located in the center of the project. He asked if they might change the density on the street directly next to a neighbor. Ms. Ekblad stated that would not take place because the portion he was referring to is platted, so changing the density is not an option. The changes will be to the back portion where no one is currently living because it is not finished.

Mr. Ink stated he understood how they would want to get credit for the density and move it to the back, but he asked if they felt the front area would change in density, particularly the area where it shows a small loop road. Ms. Ekblad stated that the region Mr. Ink was referring to is identified in the planned development for townhomes which is what the original 2004 approval was for.

Mr. Ink stated that even though he understood the legality of it, he was struggling with the pieces and parts of Outlying Suburban. Ms. Ekblad understood and stated they had no objection to staff's proposal to include the parcels owned by others. However, as applicants they do not have authorization to include them.

Mr. Ink asked for clarification that the applicant cannot achieve what they envision if they left those three developments out that are substantially developed as Sub-Outlying Suburban. Ms. Ekblad stated that was correct.

Mr. Zuba felt it was a large benefit to the applicant to go from 2 units to 3 units in density. He felt there should be more public benefit. He asked if Ms. Ekblad could outline the public benefit for giving those additional units. An example would be to include some elderly housing or affordable housing. Ms. Ekblad stated most of the benefit would come into play through the commitments of the planned development. Some of the public benefits would be the existing improvements that are being maintained such as turn lanes, sidewalks, interior improvements that promote mobility, open space, and recreational amenities.

Ms. Montgomery from the Pavese Law Firm asked if “public benefit” was a requirement of chapter 163. Ms. Ekblad stated it was no longer a requirement because “overriding public necessity” was removed.

Ms. Montgomery asked if encouraging infill as opposed to urban sprawl and pushing the density further out is addressed in Chapter 163. Ms. Ekblad stated it was.

Ms. Montgomery asked if the County, within the last year, had changed or eliminated the requirement that was in the comprehensive plan regarding public benefit. Ms. Ekblad stated that was correct.

Mr. Church referred to comments made by Mr. Ink and asked if they were going to keep the minimum lot size as it is. Ms. Ekblad stated they would keep the minimum as it is in the planned development. The planned development establishes a minimum. They cannot go under the minimum but they are allowed to enlarge the lot size.

Mr. Church asked for clarification that they are allowed to take the 500 lots in the bottom rectangle area and turn them into thinner lots, or have attached villas, or some other higher density use. Ms. Ekblad stated that was correct.

Ms. Jenkins-Owen reviewed the staff report and recommendations along with a PowerPoint presentation.

Mr. Church stated that it seemed as if the County can unilaterally change property owner’s comprehensive plan designation. Ms. Jenkins-Owen stated that was correct, but that a courtesy notice was mailed out to the property owners so that they were aware of staff’s recommendation. Included in the courtesy notice was a link so that the public could access all documents in the file.

Mr. Stouder asked how many lot owners there were. Ms. Jenkins-Owen stated she believed it totaled 122 property owners.

Mr. Stouder asked if any of them had a home on the property. Ms. Jenkins-Owen stated a number of the properties had homes on them, but they are all located in the northwest area. She showed the Board where the outlying parcels were and noted that some of them were built while others were in the process.

Mr. Stouder asked for clarification that this change would not limit property owners to a lesser density. Ms. Jenkins-Owen stated that was correct. She also noted there would be no changes to the platted areas so there is no benefit to the applicant. The inclusion of the individual lots make it easier to regulate because there will be a consistent future land use map designation for that area.

Mr. Stouder stated he understood why it would benefit the county by making it easier to regulate, but he wanted to make sure it would not be a detriment to the homeowner. Ms. Jenkins-Owen confirmed that the change would not be a detriment to the homeowner.

Mr. Church opened this item for public comment. Public input was received by:

Gary Stilwell (opposed).

Since Mr. Stilwell’s main concern was regarding water, where the discharge goes, and direction of the flow, and excess flow, Mr. Stouder asked if anyone wanted to address his concerns. Ms. Montgomery stated there was an existing ERP, which establishes control elevations, discharge rates, and the direction of the flow. Any amendment to the project will require an amendment to the ERP. However, it is not anticipated that the discharge rate or the direction of the water flow is going to change. It will continue to

flow in a permitted state in the same direction as it did in its natural state. She stated that the backbone system for this project and for River Hall is in place.

Mr. Stouder asked if anyone had expressed objections about adding rooftops or about anything else. Ms. Ekblad stated that through the public meetings and some correspondence they had received comments that were mostly related to traffic and stormwater management. In both public meetings it was asked whether or not county staff was going to support the project. At that time, she was unable to comment on that. There were also various statements made about River Hall and how it was approved. To the public, it seems that Lee County seems to be supportive of adding rooftops to existing subdivisions. She noted the public did not seem to be happy about that.

Mr. Ink made a motion to recommend that the Board of County Commissioners transmit CPA2018-00004 Portico with staff's recommendations, seconded by Mr. Stouder. The motion was called and passed 6-0. Mr. Thibaut abstained.

C. CPA2018-10014 – Limerock Mining

Mr. Laskowski reviewed the staff report and recommendations along with a PowerPoint presentation.

Mr. Loveland stated the following:

- This is a county-initiated amendment. Despite an article in the paper, mining interests are not behind this amendment. It is based on county staff's review and the general direction they have received by the Board of County Commissioners (BoCC) to eliminate legal liabilities and streamline our plan.
- This is not directly related to the two active mine cases. The Old Corkscrew mine project is not required to go through the comprehensive plan amendment process and are being evaluated based on the 2007 regulations by virtue of their settlement agreement. The Troyer Brothers mining project already went through the Map 14 amendment process. When they came before the Local Planning Agency (LPA), the LPA recommended that the Board transmit the amendment to the state. It is still going through the rezoning process in accordance with the county's Chapter 12 requirements.
- While reviewing Troyer Brothers, some things were noticed by staff in relation to determining comprehensive plan consistency. There is an expectation that some of the comprehensive plan requirements add a level of protection, but it is not clear to staff what it accomplishes due to vague language that is not defined, such as "high disturbance activity," "existing disturbed areas," and "less disturbed environments." This vague language makes it difficult to use the comprehensive plan amendment process to deny a plan amendment.
- The demand study is also unique compared to what is done for other land use changes.
- Staff is not proposing to eliminate regulation of mines in the southeast DR/GR area. It is not going to be a "free for all" where people can put mines anywhere they wish.
- Issues such as compatibility, whether a particular location is appropriate for a mine in terms of surrounding land uses, impacts on water levels, impacts on wetlands, impacts on wildlife, etc. are evaluated as part of the zoning process. All of those types of details are part of the Chapter 12 zoning requirements.

- The question today is whether the Map 14 comprehensive plan amendment process is appropriate as an extra step in the process. Although it may add an extra layer of public involvement, staff does not think it is a good enough basis for having to go through a plan amendment process.

Mr. Church asked if the Troyer Brothers case had gone to the Department of Economic Opportunity and if staff received a final recommendation from them. Mr. Dunn stated they had received comments from the state reviewing agencies, but no one had substantive concerns or comments. The case is on hold while staff waits for the zoning recommendation from the Hearing Examiner's office. Once the recommendation is received, the case will be scheduled to go before the Board of County Commissioners.

Mr. Church asked if there would be any impacts on the Troyer Brothers case, negative or positive, if we change the requirements of Map 14. Mr. Dunn stated the change would have no impacts to the Troyer Brothers case.

Mr. Ink asked what future land use categories allow mines. Mr. Dunn stated they are allowed in the "*Density Reduction/Groundwater Resource*" and "*Industrial*" land use categories. [Staff correction: Limerock mines are only allowed in the Density Reduction/Groundwater Resource future land use category.]

Mr. Ink asked for confirmation that since they are only allowed in those land use categories, it limits where mines can be located. For instance, they would not be allowed in an urban area. Mr. Dunn stated that was correct.

Mr. Ink asked how Map 14 originated. Mr. Dunn stated Map 14 originally only indicated where limerock was located. It was not a requirement to be on Map 14 in order to mine. Through CPA2008-00006, approximately a decade ago, Map 14 became regulatory. At that time, a lot of the mining activity was located along Alico Road and some other properties were added to it that were no longer near Alico Road.

Mr. Ink asked if it was good planning practice to have regulatory language in the comprehensive plan or should it be in the Land Development Code. Mr. Loveland stated this is part of the on-going effort of streamlining and removing redundancies. Staff has made a conscious effort to remove regulatory language from the comprehensive plan and put it in the Land Development Code where it belongs. They have also been taking procedural issues out of the Land Development Code and making it a part of the administrative code.

Mr. Ink noted that this is not something that has only taken place today with this particular amendment. Staff has been streamlining, removing redundancies, taking regulatory language out of the comprehensive plan and placing it in the Land Development Code for various other goals throughout the comprehensive plan. Most recently, the Local Planning Agency reviewed the Conservation and Coastal Management element. He asked if this amendment would also involve deleting the requirement for the demand study. Mr. Loveland stated that was correct. Staff is proposing to eliminate Map 14 as well as the demand study.

Mr. Ink stated we do not require a demand study for retail proposals or other land uses. He asked what purpose it served to require the demand study for mining applications. Mr. Loveland stated this was the question staff has been contemplating as to why this is a requirement for mining applications when it is not required of other land uses. It became clear during staff's analysis, that there is no clear cut, single methodology on how to estimate future limerock demand especially on a regional basis. In staff's opinion, this opens the door for a lot of argument on how it should be determined.

Mr. Ink referred to a report by Missimer that showed there was a large vein of limerock that went from Collier County to Charlotte County, so it would be hard for staff to determine the demand for that area that was mentioned in the report. Mr. Ink asked for clarification that in making this change it would not alter the technical steps and review that mines would have to go through such as groundwater, the environment, restoration and reclamation. Mr. Loveland stated that was correct. Despite this amendment, mining applications would still be reviewed for those technical issues.

Ms. Smale asked if staff would continue to monitor the quantity of mining that occurs if they eliminate the demand study for limerock. In other words, could we end up with a larger number of active mines that are not being used to capacity causing the county to have more mines than needed? Mr. Dunn stated that Chapter 12 has monitoring requirements in place, which will still be required of mines. Staff is not planning to make any changes to Chapter 12 of the Land Development Code. At a future time, staff might evaluate whether or not it is still necessary to require that monitoring, but as of now, no changes to Chapter 12 are proposed.

Mr. Thibaut asked what additional requirements were placed on an applicant seeking a Mine Development Order (MDO) versus a standard Development Order. Ms. Sweigert stated the MDO process is more lengthy in terms of surface water, historic flowways, and wildlife habitat requirements; there is a long list of criteria in Chapter 12 for the MEPD application as well as the MDO. It addresses items such as compatibility, noise, dust, and light to make sure we are protecting all the resources in the area.

Mr. Zuba stated he felt the demand study seemed antiquated. How can you determine how many granite countertops will be needed? He noted that a product such as limerock could be secured nationally. It does not have to be a regional or local demand. For instance, we do not grow more pine trees because we need dry wall. However, Mr. Zuba noted that he did not see the connection between eliminating the market demand study and the elimination of Map 14. He asked if staff could eliminate the market demand study without eliminating Map 14. Ms. Rozdolski stated that we are in essence putting mining locations on the map without the amount of data and analysis that is required as part of the rezoning process, which is located in Chapter 12 of the Land Development Code. Therefore, it is a more appropriate process to go through the rezoning in order to determine where the most appropriate places are for limerock mines versus the comprehensive plan.

Mr. Zuba asked if these proposed changes had been aired to the public prior to today's hearing. Mr. Loveland stated that all comprehensive plan amendments go through the process taking place today where it goes to the Local Planning Agency first, then it goes to the BoCC for a transmittal hearing and it eventually goes back to the BoCC for adoption after state review. Those three processes are all public hearings, giving the public three opportunities to provide public input. Beyond this, a separate public hearing has not been held nor is it a requirement for this plan amendment versus any other plan amendment.

Mr. Thibaut asked if there were areas on Map 14 where applicants were denied an MDO based on issues of environmental or other requirements. In addition, does Map 14 identify limerock areas that may not be suitable for limerock operations? Mr. Dunn stated there were no applicants denied an MDO. Staff may request additional information or suggest some modifications to the design to make it consistent with the zoning, Land Development Code, or Lee Plan requirements. If the property is listed on Map 14 and they have the appropriate zoning, then critical issues were already evaluated as part of the MEPD process, which involves meeting requirements outlined as part of Chapter 12.

Mr. Church stated that much of the staff report argument is to clean up ambiguous language so it can withstand legal challenges. He asked if the county lost any cases because of the current language. Mr. Jacob stated the county had not lost any cases. There has only been one case (Troyer Brothers), which is still in the approval process.

Mr. Church referred to a letter by the Conservancy of SW Florida and stated it seemed to assert that all policies were held up in a major DOAH hearing in 2012. Mr. Jacob stated he was referring to when the Board initially adopted the policies and confirmed that it had gone through a challenge by the mining interests. It was upheld by the judge. The criteria for the challenge is an easy standard to meet. It was determined that the BoCC's reasonings and justifications for the policies were fairly debatable and their challenges were in essence denied.

Mr. Church referred to the public perception that if Map 14 is eliminated, then the public will not be allowed to provide public input. Currently, the public can contact the BoCC directly anytime between now and when an amendment goes to the Board. However, this amendment would mean they could no longer directly contact the Commissioners. Mr. Loveland stated that was correct. They would still be able to attend the zoning public hearing and provide input, but because it is a quasi-judicial process, they cannot have ex-parte communications outside of the hearing.

Mr. Church stated the public seems to want to delay the decision on this and feels that another hearing is needed. He asked what type of forum that would be and how staff would facilitate it. Mr. Loveland stated he would only be speculating at this point because this would be a new step outside of our regular process. It would require direction from the BoCC. There have been times that the county has held public information meetings for the public, but it is different from a public hearing. It would depend upon what the BoCC directed staff to do since this is outside of our standard process.

Mr. Church referred to Policy 33.2.3 on Page 10 of Attachment 1 where staff has added a paragraph that reads, "*Tiers 1, 2, 3, and the southern two miles of Tiers 5, 6, and 7 will qualify for unique development incentives because of potential natural resource benefits and/or wildlife connections. Additionally, the county may consider other incentives, within all tiers, for private landowners to improve water resources and natural ecosystems.*" He asked if this change would make a one mile strip along Corkscrew Road into a two mile strip where the overlay and the development overlay would be allowed. Mr. Dunn stated the reference to the two miles is existing language in the Lee Plan that will be retained. He noted it did not have an impact on those EEPKO communities which are the residential communities being built along Corkscrew Road.

Mr. Church asked what the "*unique development incentives*" would be in the context of this language. Mr. Dunn stated the "*unique development incentives*" would be for the areas that are not in 1, 2, or 3 or the southern two miles of 5, 6, and 7. The incentives have not been defined and have been left open in case the BoCC and/or staff define them in the future. Some future incentives may be important or used in order to save/preserve those areas, but as of now, they are undefined.

Mr. Church stated that to him "*development incentives*" means density in exchange for something. If this gets approved, he felt it could give someone a lot of latitude without a public hearing. Ms. Rozdolski stated that Policy 33.2.3 is an existing policy that is being renumbered to Policy 33.1.3. There were three paragraphs under the initial paragraph. The proposed change today would combine the three paragraphs underneath. She referred to language in number 2 which will be removed. It is the same language as the added paragraph. It is saying that they will qualify for incentives. However, the incentives will be determined through a future comprehensive plan amendment or a Land Development Code amendment as necessary. The county does not have any program established other than what has been provided through the EECPO.

The Board convened at 10:00 a.m. and reconvened at 10:10 a.m.

Mr. Church opened this item for public comment. Public input was received as follows:

Jim Brann (opposed)	James Freeman (opposed)
Arvo Rahe (opposed)	Greg Stuart (rep. Sakata Seed and Self) (opposed)
Julianne Thomas (rep. Cons.of SW FL) (opposed)	Vik Chhabra (rep. For Truth Media) (opposed)
Matt Uhle (rep. Sakata Seed) (opposed)	Holly Rauen (rep. People of Lee County) (opposed)
Darrell Mounts (opposed)	Alessa Leathers (rep. Cape Coral Friends of Wildlife)
Scotty Wood (opposed)	- (opposed)
Matt Noble (rep. Village of Estero) (opposed)	Linda Nelson (opposed)
Kevin Hill (opposed)	Jim Lytell (opposed)
Mark Preston (opposed)	Solemi Hernandez (rep. Sierra Club) (opposed)
Alicia Dixon (rep. LC Port Authority) (neutral)	Meredith Budd (rep. Florida Wildlife Federation)
Peter Cangialosi (rep. ECCL) (opposed)	- (opposed)
Bill Carr (rep. ECCL) (opposed)	Gloria Gertner (opposed)
Susan Prock (opposed)	Linda Bigelow
Brad Cornell (rep. Audubon) (opposed)	Don Eslick (ECCL) (opposed)
Joan Marshall (opposed)	

The Board convened at 11:40 a.m. and reconvened at 11:43 a.m.

Mr. Zuba asked if staff still supports the idea of recommending this item move forward to the BoCC after hearing comments by the public. Mr. Dunn stated staff still supports the idea of proceeding with the amendment.

Mr. Stouder asked how much time the public would have to comment during the zoning hearing. Mr. Dunn stated it is normally at the pleasure of the BoCC, but that it was typically between 3 – 5 minutes. Ms. Rozdolski noted that when it goes to the Hearing Examiner, they normally allow the public to speak as long as they like if they stay on topic.

Mr. Feeney referred to comments about ambiguous language in the comprehensive plan. He asked what staff has done in an effort to define the ambiguous language. He asked if the language could be better defined as opposed to removing the entire section and the map. Mr. Jacob stated that whether or not ambiguous language should be left in the comprehensive plan is a secondary question. The first question is “*why do we need these items in the comprehensive plan from the standpoint of the demand study?*” In other words, “*why are we requiring that?*” The next question is “*why do we need Map 14?*” He noted the county has only had one case that has required analysis under this regulation. Mr. Jacob referred to a comment made by the public regarding wetland exemptions. He clarified it is not an exemption. If someone is approved to be on Map 14, they are allowed to impact wetlands. As part of this process, staff asked “*why are we allowing someone to impact wetlands?*” Staff is proposing changes that came up during the Troyer case. In summary, before staff reanalyzes the ambiguous language, they must first ascertain why they are defining the language and what it is needed for.

Mr. Feeney referred to the comment by Mr. Jacob about impacting wetlands. He stated he was not concerned with that because there are requirements by the Army Corp and the Bureau of Mines and Restitution and they would have to approve the mine. Those agencies may or may not agree with the position of the county. Mr. Jacob stated that was correct, but staff is suggesting the county should get away from approving it. If the applicants obtain permits allowing them to impact wetlands, the county will not give them any incentives or benefits to do so.

Mr. Ink stated he has been in Lee County for 60 years. Mining has always been a part of Lee County's culture. He noted that Lakes Park and FGCU were mines that have been restored. He was not against mining as he believed in the science that mines are reclaimable, provide water stability, and can protect the environment and water quality. However, he acknowledged that mines are unique. Mr. Ink stated he had no issue with cleaning up the language or removing the demand study. However, he was struggling with the removal of Map 14 because it outlines where the limerock is located. Mr. Ink stated he had not heard anything from staff to explain removing Map 14 and noted that nothing is in its place. He did not oppose the idea of this being handled as part of the zoning process because it still allows the public an opportunity to participate.

Mr. Zuba stated he agreed with Mr. Ink's comments and also had no problem with some items, but also had difficulty with the deletion of Map 14 because there does not seem to be an alternative. He also referred to comments made by Mr. Matthew Noble where he discussed various studies. The Local Planning Agency was not provided those studies, but he felt they were important if the Board was going to make a decision on this. Mr. Zuba stated that he would not be voting to move this item forward since he did not have that information.

Mr. Thibaut referred to the demand study and stated he was not in support of keeping it in the comprehensive plan. He did not agree with approving a use such as mining that is based on a market or demand study because the environment and population changes dramatically. From his evaluation of various studies, the one common denominator is that they all seem to be inconclusive. Some of the studies seem to reflect that we have adequate limerock mines while others say we do not have enough. They seem to be based on interpretation. For those reasons, he could not support keeping the demand study. Regarding Map 14, he did not feel it achieved what staff is trying to attain, which is to put mines where it makes sense and where they deserve to be. Map 14 appears to be too broad. It allows mining in places where it should not be, which staff notes in their own analysis. He referred to staff's analysis where it states that Map 14 allows impacts to wetlands, groundwater, and surface water. He felt a lot of that had to do with the fact that the DR/GR allows mining which is a decision that was put in place a long time ago. Although, he felt staff was moving in the right direction, he wanted to hear input from other Board members before making a final decision.

Ms. Smale stated she understood the public's frustration at only having approximately a week to review this and how they may have been caught off-guard. Given the sensitivity of this issue, she felt it was a reasonable request that the public be given more time to understand this amendment. Staff could help the public understand the reasons for the amendment and the deletion of the map. She did not see a compelling reason since no alternative was given as to how this will be regulated. For instance, how will the county monitor mines if the map is eliminated? There does not seem to be an alternative plan. In terms of the demand study, Ms. Smale stated she did not have an issue with removing it because she realizes that demand studies can be very subject to interpretation of data as well as where the data comes from. Regarding ambiguous language, Ms. Smale felt some of the replacement language was also ambiguous such as "*other incentives*" and "*unique development*." She understood what staff was trying to do and felt we could all work together to head in a better direction and accomplish some of staff's goals, but felt more time was needed to refine this.

Mr. Church stated that the Local Planning Agency's primary role is to advise whether items brought forth are consistent with the comprehensive plan. In the past, when amendments have been brought forth, staff sites comprehensive plan policies, goals, and objectives that support the change. However, with this amendment there was no indication in the staff report of any policy or objective that supported deleting a large portion of the comprehensive plan that regulates the most noxious use allowed in Lee County. He noted that mining is categorically disruptive to the environment and groundwater. It has the biggest set of

compatibility issues and generates the kind of traffic that people perceive as the most dangerous. The portions being deleted are protections that address those issues. On the issue of whether this should be a comprehensive plan amendment process or a planned development process, he felt more of a public process was deserved because mines tend to be so disruptive. The current process is a process that allows more public participation than a zoning case. For those reasons, Mr. Church stated he could not support staff's recommendation. He distributed a document to the Board that outlined his recommendations and he reviewed it. After his review, Mr. Church outlined his recommended motions.

Mr. Stouder concurred with comments made by Mr. Church. He recalled when the mining issues first began which resulted in vitriolic outbreaks and signs along the road. Mr. Stouder appreciated that 29 members of the public attended today's hearing and he understood the frustration some of them related on what they deal with by being near a mine in terms of the dust filled environment and the vibrations it causes in their homes. He appreciated Mr. Church's document that helped break things down to a point where it could be discussed further. He agreed that the market analysis is antiquated, so he could understand eliminating that requirement. Although he supports some of staff's reasons for supporting this, he felt it would require more than one step to achieve those outcomes.

Mr. Jacob stated that, as Chair, Mr. Church would not be permitted to make the motions, but he could "second" the motion. Mr. Zuba agreed to make the motions for him.

Mr. Zuba made a motion to: 1) delete language in Policy 33.1.4 that requires the county to do a supply study or that requires the applicant to show demand. Strike language related to that in other sections. Modify language as necessary; 2) amend policy 33.1.1 to end with phrase "concentrate limerock mining activity" (4th sentence from top). Add language that says, "amendments to Map 14 will be considered on a case by case basis and evaluated based on compatibility, environmental, hydrological, transportation and other factors normally considered when evaluating a comprehensive plan amendment"; 3) if motions above are passed, to modify this language to make this policy language consistent with other proposed policies with particular emphasis on how future changes to Map 14 would affect this language; and 4) ask staff to determine that, if passed, changes proposed in motions above require this language to be modified. If so, bring them forward to the next hearing on the items identified in the staff report, seconded by Mr. Church.

After further discussion, Mr. Jacob suggested that staff take the Local Planning Agency's comments and make some revisions to the proposed amendment where they feel they can support it. They can bring it back to the Local Planning Agency next month. During that timeframe, the Local Planning Agency will have an opportunity to review Map 14 and determine what it actually does and compare what will take place without it.

Mr. Dunn asked a question of legal counsel. If through this process it is determined that land should be added to Map 14, but through the zoning process it is revealed that there might be some detrimental impacts, would the county be tied to granting some form of approval on that land?

Mr. Jacob stated that most likely the county would be tied to granting some form of approval. He explained that an applicant does not have to go through an MEPD process to get on Map 14 currently and they would not have to do so in the future. A property could come through for review, get on Map 14, and show nothing as far as analysis, since there is no criteria for Map 14. With the language suggested by the Board, they would have some expectations of being developed as a mine.

Mr. Church stated the Local Planning Agency could make a recommendation that staff create criteria for review during an amendment to Map 14.

Mr. Ink did not feel it was appropriate to have regulations in the comprehensive plan.

Mr. Stouder suggested that Mr. Zuba withdraw the motion and replace it with a motion to table the discussion until next month. Staff can implement the sentiments of the Board and have it scheduled next month. This will give the public an opportunity to review the changes as well. The Local Planning Agency can take some type of action next month.

Mr. Zuba stated his only concern was that he did not want to see a re-draft of what we already have. Mr. Stouder felt the Local Planning Agency has made their sentiments clear. If staff brings back the same proposal, it will not be warmly received. Staff can govern themselves accordingly, but are on notice that if they come back with the same thing in a different package, it will be sent back.

Mr. Zuba withdrew his motion. The seconder of the motion, Mr. Church, agreed to the withdrawal. He suggested that staff redraft this amendment based on information received at today's hearing. The Local Planning Agency can act on it next month.

Mr. Jacob stated this has taken place with other committees where staff received comments and came back with suggested changes. It is not always an adoption of everything the committee asked for, but to the extent that staff can.

Mr. Stouder made a motion to table this amendment to the next Local Planning Agency meeting, seconded by Mr. Zuba. The motion was called and passed 7-0.

Agenda Item 5 – Other Business - None

Agenda Item 7 – Adjournment – Next Meeting Date: January 28, 2018

The next Local Planning Agency meeting is scheduled for Monday, January 28, 2018, at 8:30 a.m.

Mr. Church announced that he would not be on the Local Planning Agency next year.

The meeting adjourned at 12:20 p.m.

CPA2018-10014

LIMEROCK

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

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 10.1.6: 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, maximum limerock mine pit size, and an additional public input opportunity (to implement the proposed Policy 10.2.8 - see part C.2) which can be found, for informational purposes, in Attachment 2. The proposed Chapter 12 amendments in Attachment 2 will be reviewed and acted upon as a separate item.

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: All MEPD rezonings will be required to hold a public informational meeting that meets the requirements of Policy 17.3.4, within three miles of the boundary of the affected Community Plan Area prior to the submittal of the rezoning application.

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.

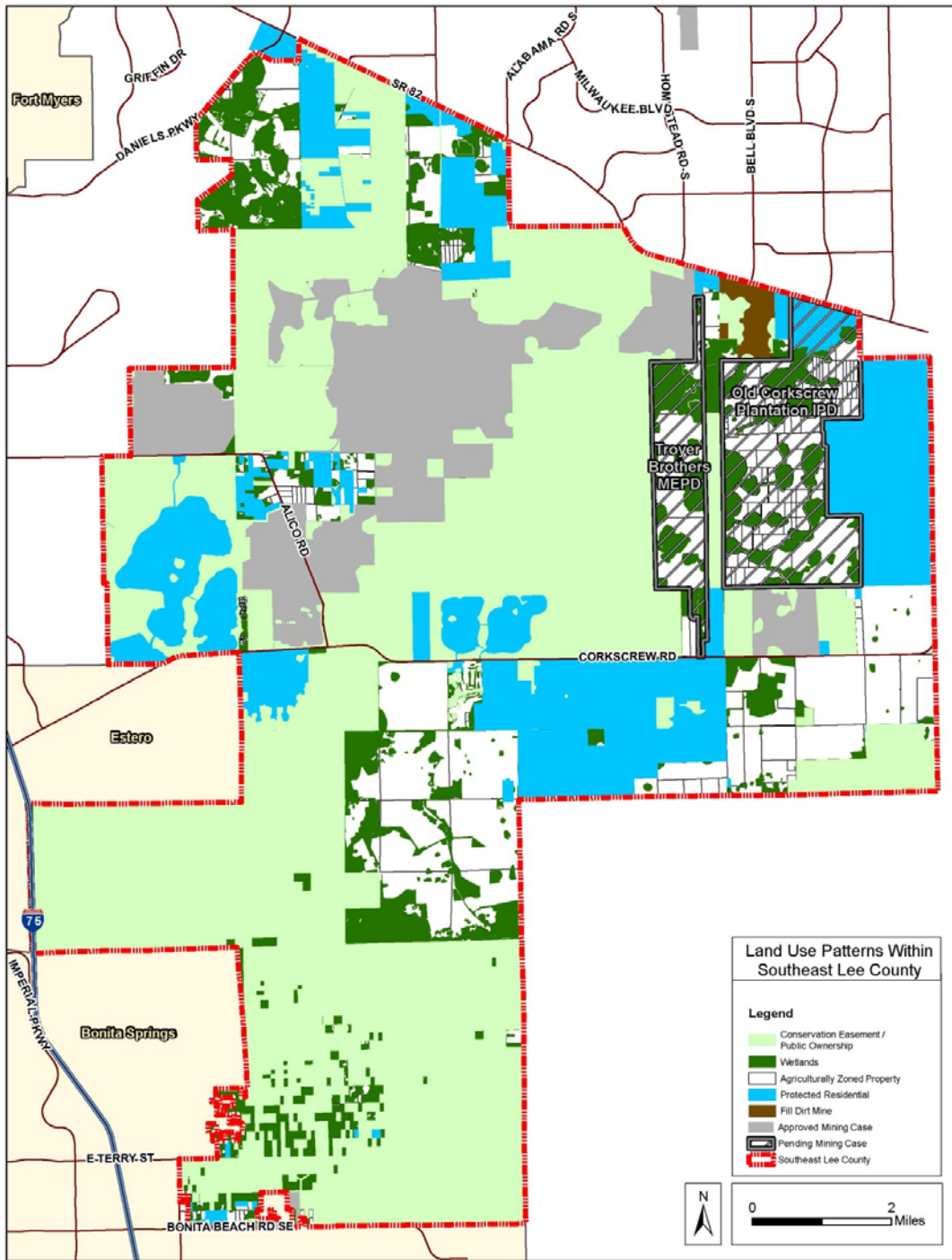
Additionally, even though the TARC is not defined, there are few (if any) remaining locations in the TARC appropriate for limerock mining and the associated impacts. Within the TARC there are existing residential uses; the Wild Turkey Strand Preserve and Stewart Cypress Slough, which serves as the headwaters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

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). Commercial uses can only be incorporated into Mixed Use Communities and Environmental Enhancement and Preservation Communities; See Policies 33.3.2, 33.3.3, 33.3.4, 33.3.5 and 33.3.6 Objectives 33.2 and 33.3 for potential density adjustments resulting from concentration or transfer of development rights and for the permissibility of commercial development.
 - ~~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.
- Highlighted language was revised after the 12/17/18 LPA meeting. The DR/GR future land use category (FLUC) exists outside of Southeast Lee County; therefore, staff has proposed to eliminate references that are specific to Southeast Lee County.

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 Alieo 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 ensuring that natural resource extraction operations minimize or eliminate **potential** adverse effects on surrounding land uses and on other natural resources. (Ordinance No. 02-02, 10-20)

- Update for consistency.
- Revised based on comments from 12/17/18 LPA meeting.

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 potential 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.
- Highlighted language was revised after the 12/17/18 LPA meeting.

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

- 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)~~

- Highlighted language was revised after the 12/17/18 LPA meeting; amend policy for internal consistency with Rural and Open Lands future land use category.

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 ~~to~~ enhancing wildlife habitat values, ~~minimizeing~~ or repairing the long-term impacts to adjoining natural systems, ~~provideing~~ 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.

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. Additionally, 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:** All MEPD rezonings will be required to hold a public informational meeting that meets the requirements of Policy 17.3.4, within three miles of the boundary of the affected Community Plan Area prior to the submittal of the rezoning application.~~

- 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. All commercial development will be limited to the extent of the subsequent provisions of this goal.~~

- 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 because of due to the property's potential for natural resource benefits and/or wildlife connections. Additionally, the county may consider ~~other~~ 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.
- Highlighted language was revised after the 12/17/18 LPA meeting.

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.

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, 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.

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 adjacent** upland density rate. Density calculations for impacted wetlands must be at 1 dwelling unit per 20 acres **and uses are limited to those allowed in the Wetland Future Land Use Category.**

(Ordinance No. 94-30, 00-22, 07-12, 10-20, 10-39)

- Delete reference to Map 14.
- Clarify language.
- Highlighted language was revised after the 12/17/18 LPA meeting; Staff requires additional time to review any amendments to the proposed part 6 of Policy 124.1.2.

XIII. Administration

b. Administrative Interpretation of the Plan

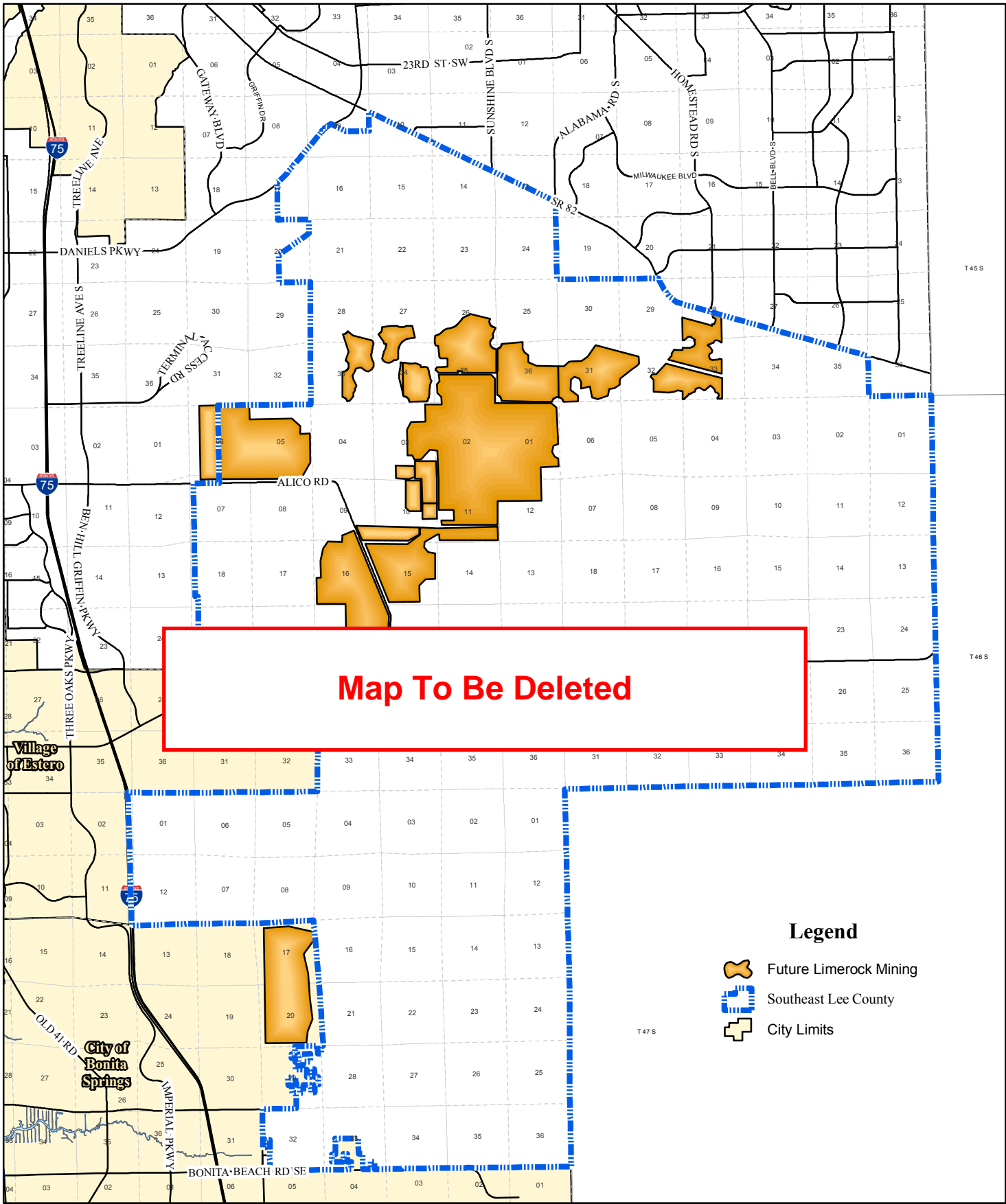
2. Standards for Administrative Interpretations

- 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	

Sec. 12-108. - Approval process for mine excavation planned development.

- (a) *Process objective.* The objective of this process is to provide a unified process based upon comprehensive information submitted for review of both the use and development rights. The process is designed to minimize review and resubmittal time frames as well as the time elapsing between approval of the proposed mining activity and actual resource extraction on the mine site.
- (b) *Effect of Chapters 10 and 34.* The process and resulting approvals are not subject to the provisions in Chapter 10 or Chapter 34 unless specifically stated.
- (c) *Mandatory pre-application meeting.* The applicant must attend a pre-application meeting with appropriate County staff prior to submittal of the MEPD application. Appropriate County staff representatives from the following departments must be in attendance at this meeting: Zoning, Development Services, Department of Transportation, Natural Resources and Environmental Sciences; and local representatives from the Department of Environmental Protection, Florida Department of Transportation, South Florida Water Management District and the Army Corps of Engineers should also be invited to attend. During the meeting the applicant must be prepared to discuss the following topics: location of the project, extent/boundaries of the mine project, size of mine, depth of the mine, amount of material the applicant anticipates will be excavated over the life of the mine, proposed duration of mine activity, mine design alternatives including cell mining, potential associated mine activities, phasing, water issues, transportation impacts, watershed boundaries, habitat issues, environmental issues, water monitoring, surrounding uses, Lee Plan compliance, and state and federal permit issues. The applicant must bring maps and other documentation to facilitate discussion with respect to these issues. Subsequent to the meeting, the County will provide the applicant with a memorandum outlining issues relevant to the applicant's future submittal. This memorandum is intended to assist the applicant in preparing the formal submittal and does not confer any specific rights to the applicant with respect to approvals or submittals.
- (d) *Mandatory public information meeting.* The applicant must hold a public information meeting at a location within three miles of the affected Community Plan area prior to submittal of the MEPD application. The applicant must provide a meeting space and any security measures adequate to accommodate the projected attendance. Advance notice of the meeting must be published in a publication of local distribution at least ten (10) calendar days prior to the meeting, with proof of publication provided to the Department of Community Development at the time of application. At the meeting, the applicant must present a general overview of the proposed MEPD and provide the opportunity for public input. A meeting summary document containing the following information must be submitted at the time of application: the date, time, and location of the meeting; a list of attendees; a summary of concerns or issues raised during the meeting; and the applicant response to concerns or issues raised.
- (de) *Mine Excavation Planned Development (MEPD) approval.* The MEPD approval is issued by the Board of County Commissioners based upon the recommendations of the County staff and Lee County Hearing Examiner in accordance with sections 34-83 and 34-145(d). A hearing before the Board of County Commissioners will be scheduled after the applicant submits a MEPD application on the form specified by the County, achieves sufficiency for hearing before the Hearing Examiner, and obtains a recommendation from the Hearing Examiner to the Board for consideration at the end of a regular Board Zoning agenda day. The specific Board hearing date will be determined by County staff.
- Unlike typical chapter 34 zoning approvals, the MEPD approval will encompass and be based upon zoning issues as well as technical information and detail traditionally reserved for review under chapter 10. The Board's decision with respect to the MEPD application will be set forth in a resolution, along with the findings and conclusions applicable to the approval or denial. A resolution

approving the MEPD will include conditions applicable to the mine operation along with a detailed set of plans for site development and subsequent mine operation activity.

- (ef) *Mine development order (MDO)*. The MDO is intended to address all on-site and off-site improvements necessary to carry out the mine operation as approved by the Board and is based upon the conditions and exhibits that constitute the MEPD resolution. Therefore, the County encourages concurrent submittal and review of the MEPD and MDO applications in order to achieve the time efficiencies anticipated by this mine permitting process.

Review of the MDO application requires the County staff to verify that the site construction plans accurately and substantively reflect the conditions of the MEPD approval. The applicant may not propose substantive changes or amendments to the MEPD approval resolution through the MDO process. However, the Director has the discretion to administratively approve, as part of the MDO, nonsubstantial changes to the MEPD approval necessary to achieve the intent of the MEPD approval as granted by the Board.

MDO applications and submittals will be processed in the manner set forth in section 10-108 through 10-110.

A MDO will not be issued to allow activity within an area under Army Corps of Engineers' jurisdiction, as identified by the permit application submitted to the State/Federal agency, prior to obtaining the necessary State/Federal approvals.

- (fg) *Mine operation permit (MOP)*. A MOP approval allows the mine operator to commence off-site hauling, and to place into use accessory operations on the mine site such as concrete and asphalt batch plants. The items that must be complete prior to the issuance of a MOP approval will be specified in the MEPD resolution and the MDO approval.

On-site and off-site improvements and related documents that will typically precede issuance of a certificate of compliance under the MDO, which results in the issuance of the MOP and allows off-site hauling of extracted resources or operation of accessory mine facilities, may include, but are not limited to:

- (1) Installing off-site turn lanes and other on-site roadway improvements.
- (2) Constructing on-site truck staging area.
- (3) Installing truck wash and tire wash facilities.
- (4) Constructing on-site paved ingress/egress roads from the front gate to the scale house.
- (5) Installing on-site groundwater and surface water monitoring wells.
- (6) Installing pollution contamination containment structures and devices.
- (7) Installing stormwater pollution prevention devices such as silt barriers and turbidity control devices as required.
- (8) Approval of sureties related to pavement maintenance, reclamation etc.
- (9) Constructing perimeter berms and buffers.
- (10) Installing dewatering hydraulic recharge trenches and staff gauges for monitoring water elevation in trenches.
- (11) Compliance with all conditions of the ERP and water use permits relative to excavation activities.
- (12) Approval of a transportation impact mitigation plan.
- (13) Installation of required permanent traffic count stations.
- (14) Installation of utilities.

- (15) Recording conservation easements.
- (16) Other items required under conditions of the MEPD.

The MOP approval will be contained in the certificate of compliance issued by the Director with respect to full compliance with the MDO approval. The MOP will be issued only after review of all required applicant certifications (engineer, landscape architect, etc) and verification that all MDO permit requirements are complete based upon County mine site inspections. Inspections will be performed by appropriate County departments to verify completion in the manner set forth in chapter 10 as applicable to the issuance of a development order certificate of compliance. The MOP is valid for ten years. The date the MOP is issued will establish the effective date for purposes of determining when the MOP must be renewed.

(gh) *Renewal of mine operation permit.* A MOP renewal allows the mine operator to continue full operation of the mine and related accessory mine uses in accord with all permit approvals. A MOP for mines approved after September 1, 2008, must be renewed in accordance with section 12-115. Existing mines must obtain MOP renewal in accord with section 12-121.

(hi) *Sufficiency of applications and review.* Applications submitted with respect to zoning and development approval under this article will be reviewed by County staff within 30 business days after receipt; and, a letter advising the applicant of the status of the application will be provided. If insufficient, the letter will include a brief explanation as to why the application is not complete for review and request the necessary additional information. The applicant will have 60 days to submit a written response and the requested information. If the applicant requires more than 60 days to submit a response, the County may grant an additional 60 days to respond based upon the applicant's written request to the Director substantiating diligent pursuit of the response or resubmittal. If the applicant fails to submit a response or request additional time within the 60-day period, the County may deem the application withdrawn. This submittal and review process will be repeated until the application is found sufficient for hearing, if a rezoning request, or approval of a MDO/MOP request.

Once an application has been found sufficient for hearing through the rezoning process, any new information submitted by the applicant or changes made to the information reviewed by County staff in preparing its recommendation, may at the discretion of the Director, be grounds for the County staff to defer or continue the public hearing depending on the advertised status of the hearing. County staff may also revoke the finding of sufficiency and withdraw the case from Hearing Examiner consideration without regard to the status of the advertising.

(Ord. No. [08-21](#), § 2, 9-9-08; Ord. No. [11-08](#), § 5, 8-9-11)

Sec. 12-113. - Site design requirements.

(a) *Design Standards.* Mining activities will be subject to the following design standards. The Board of County Commissioners may modify these standards as a condition of approval when in the public interest, or where they determine a particular requirement unnecessary due to unusual circumstances.

(b) *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.
- (c) *Setbacks for excavation site.*
- (1) Excavations are prohibited within:
 - a. 150 feet of an existing street right-of-way line or easement; and
 - b. 150 feet of any private property line under separate ownership.
 - c. ~~150~~ 2,000 feet from ~~of any adjacent~~ residential property line.

In all cases, the most restrictive setback will apply.
 - (2) A 500-foot radial setback is required from existing permitted public well sites for mining operations approved after June 24, 2003.
 - (3) To ensure protection of surface and groundwater resources, appropriate excavation setbacks from preserve areas and adjacent properties will be determined through the environmental analysis and review process based upon site specific conditions.
 - (4) The Board of County Commissioners may allow reduced setbacks as part of the MEPD approval provided:
 - a. The reclamation plan indicates how access will be made to future development;
 - b. The reclamation plan indicates that the setback area will not be developed after restoration; and
 - c. A closer setback will not be injurious to other property owners or the water resources.
- (d) *Setbacks for accessory buildings or structures.*
- (1) Setbacks for accessory buildings or structures must be shown on the engineered site plan set.
 - (2) No crusher, mixing plant, bin, tank or structure directly involved in the production process may be located less than:
 - a. 660 feet from any residentially zoned property or use under separate ownership; or

- b. 250 feet from all nonresidential zoning districts under separate ownership.

To allow flexibility, the general area of accessory buildings, structures and processing facilities must be shown on the site plan with the appropriate setbacks noted.

- (e) *Minimum lot size.* All uses permitted under this subdivision must have a minimum lot size of ten acres.
- (f) *Security.* All entrances to mining activity areas must be restricted from public access during working hours and locked at all other times.
- (g) *Reclamation Standards.* Mining operations will be subject to the reclamation standards set forth in section 12-119.
- (h) *Transportation impacts.* Mine operations will be subject to the transportation mitigation standards set forth in section 12-116. This section requires the mine operator to be fully responsible for maintaining, repairing or replacing the accesses to the mine within the limits of the site related improvements as defined in section 12-116(c)(3).
- (i) *Fire protection.* The mining operation must be designed to provide adequate fire protection, transportation facilities, wastewater treatment and water supply. The owner or operator, at its sole cost, will be responsible for providing these services and facilities in the event of a deficiency.
- (j) *Maximum depth.* The Board of County Commissioners will establish maximum excavation depths and mining activity depth after reviewing the findings and recommendations of the South Florida Water Management District and County staff, as applicable. The permitted depth may not exceed the depth permitted by the South Florida Water Management District or County staff, as applicable and may not penetrate through impervious soil or other confining layer that presently prohibits intermingling of two or more aquifers.
- (k) *Certificate to dig; historic management plan.* When applicable, an archaeological/historic resources certificate to dig must be obtained from the County and submitted as part of the application. Florida Master Site File forms for historical or archaeological resources, facade or other historic or scenic easements related to the subject property or reports prepared by a professional archaeologist as may be required by chapter 22 must be submitted to the Director.
- (l) *Open Space.* For purposes of chapter 12 only, open space requirements applicable to the mine will be deemed satisfied if the mine site maintains the buffers, indigenous area, setbacks, and wildlife habitat areas required under this chapter or as otherwise provided in the approved MEPS resolution. The lake (or mine footprint) is considered the impacted area and is not included as a means of meeting open space requirements otherwise contemplated by the underlying zoning approvals.
- (m) *Indigenous Preservation and Replanting.* Mines must provide 25 percent of the project site as indigenous preservation or as on-site indigenous replanting if the property does not contain existing indigenous plant communities.

Created marsh wetland littoral zone areas may be counted towards the on-site indigenous preservation requirements.

On-site indigenous replanting plans approved by the County must include a minimum of four native tree and four native shrub species. Native trees must be installed at a minimum of 100 feet on center per acre and native shrubs must be installed at a minimum of 50 feet on center per acre. 50 percent of the native trees must be three feet tall and the balance of the trees may be one foot tall. Native shrubs must be installed at one gallon container size. No more than 25 percent of one species can be utilized. Indigenous replanting areas must have 80 percent survivability for a period of five years and be maintained in perpetuity. The indigenous preserve and replanting areas must be designed to provide interconnectivity to adjacent preserves and conservation lands with a particular emphasis on the incorporation of existing and historic flowways. An indigenous management plan must be submitted to address the long term maintenance of the on-site preservation/conservation easement areas.

The created marsh wetland littoral zone, indigenous preserves, replanted indigenous areas, preserved and restored flowways, buffers, and open space used to meet County requirements must be maintained in perpetuity even with a change in land use.

- (n) *Invasive Exotic Removal.* An invasive exotic removal plan must be adopted as part of the MEPD approval that is acceptable to environmental sciences. The removal may be phased with long term maintenance continuing in perpetuity. The invasive exotics to be removed must be consistent with section 10-420(h).
- (o) *Buffers.* Buffers are required in accordance with the following standards.
 - (1) The following buffers must be provided when the mine property abuts the listed use or zoning district, whichever is most restrictive:
 - a. *Right-of-way:*
 - 1. Minimum 50 feet width, maintained at natural grade;
 - 2. Every 100 feet of the right-of-way buffer must consist of:
 - Ten ten-foot trees with two-inch caliper and four-foot spread
 - Ten 5-foot trees with one-inch caliper and two-foot spread
 - 100 native shrubs 24 inches in height
 - 3. 50 percent of the required trees must be native pines; 30 percent must be large native canopy trees (e.g. live oaks); and 20 percent native palms or appropriate native wetland vegetation.
 - b. *Residential:*
 - 1. Minimum 150 feet width, maintained at natural grade;
 - 2. Every 100 feet of the residential buffer must consist of:
 - Fifteen ten-foot trees with two-inch caliper and four-foot spread
 - Ten five-foot trees with one-inch caliper and two-foot spread
 - 150 native shrubs 24 inches in height
 - 3. 50 percent of the required trees must be native pines; 30 percent must be large native canopy trees (e.g. live oaks); and 20 percent native palms or appropriate native wetland vegetation.
 - c. *Agricultural:*
 - Minimum 50-foot width, maintained at natural grade.
 - d. *Conservation Lands:*
 - 1. Minimum 100-foot width, maintained at natural grade;
 - 2. Every 100 feet of the conservation lands buffer must consist of:
 - Ten ten-foot trees with two-inch caliper and four-foot spread
 - Ten five-foot trees with one-inch caliper and two-foot spread
 - 100 native shrubs 24 inches in height
 - 3. Seeded with native herbaceous plants.
 - (2) *Standards applicable to all Buffers.*

- a. Vegetation must be allowed to grow to natural height and form. Trimming is limited to health and safety maintenance pruning (i.e. shrubs, trees, and palms may not be hedged or formally shaped).
 - b. Buffer plantings must occur at grade, unless otherwise conditioned within the MEPD resolution.
 - c. Existing native vegetation may be used to meet the buffer requirements.
 - d. The County may grant a request to use smaller plant material, as long as the equivalent overall height is achieved per linear foot.
 - e. Buffer plants may not be installed in a straight line. Plantings must be installed in a random fashion throughout the width of the buffer to mimic a natural system.
 - f. The Director has the discretion to require a more restrictive buffer when deemed necessary for compatibility in accord with the following:
 - 1. If a berm is deemed necessary by the County, it must be located at the distance closest to the mine within the buffer. Berms may not exceed 3:1 slope and must be limited to a maximum height of eight feet.
 - 2. If any portion of the buffer plantings is to occur on the berm, a specific condition must be included in the MEPD resolution or MDO approval.
 - g. Buffers must be installed prior to issuance of a MOP (via final MDO certificate of compliance) and prior to the excavation of materials for hauling off-site.
 - h. Created marsh wetland littoral zone areas, on-site indigenous preserve areas and wildlife habitat areas may be counted towards the buffer area requirements.
- (p) *Wildlife habitat.* In order to provide interconnectivity of wildlife habitat areas, including Florida panther and Florida black bear habitat, and to allow these large mammals to move locally within their range, projects located within any USFWS Florida panther protection zone must be designed to allow movement of Florida panther and Florida black bear through indigenous preserves or appropriately planted buffer and open space areas. If existing adjacent uses are not suitable for Florida panther or Florida black bear, then a deviation from this requirement may be requested during the MEPD application process.
- (1) Local wildlife habitat areas must be a minimum 300 feet wide, designed to allow mammals to traverse the project property, and connect to adjacent preserves or conservation lands that are existing or anticipated to occur in the future.
 - (2) Prior to the issuance of a MOP, the 300-foot wide area must be planted with a continuous native shrub hedge (33 shrubs per 100 linear feet; minimum three-gallon container size) along the perimeter of the habitat area and a minimum of 20 native trees per 100 linear foot clustered (minimum ten trees per cluster; minimum 7-gallon container size) within the habitat area to provide cover. Existing native vegetation may be used to meet the planting requirement.
 - (3) The wildlife habitat plantings may count toward any buffer, general tree, or indigenous replanting requirement if they meet the minimum standards for buffers, general trees, or indigenous replanting.
 - (4) Preferred vegetation includes, but is not limited to:

Trees: live oak (*Quercus virginiana*), laurel oak (*Quercus laurifolia*), south Florida slash pine (*Pinus elliotii var. densa*), cypress (*Taxodium distichum*; *Taxodium ascendens*)

Shrubs: wax myrtle (*Myrica cerifera*), cocoplum (*Chrysobalanus icaco*), saw palmetto (*Serenoa repens*), Florida privet (*Forestiera segregata*).

- (5) Created marsh wetland littoral zone areas, on-site indigenous preserve areas and buffer areas may be counted towards the wildlife habitat area requirements.
- (q) *Truck and tire wash.* The use of a truck and tire wash system is mandatory for all projects. The truck and tire wash must:
- (1) Be installed on the property with a minimum setback of 150 feet from the project boundary;
 - (2) Be located on the paved access connection at least 100 feet from the interior terminus of the paved access connection; and
 - (3) Provide water quality treatment and recycling for the truck and tire wash water.
- (r) *Truck staging.* Truck staging within limits of either public or private roads external to the mine site is prohibited. The mine is required to provide adequate on-site stacking space to accommodate staging of mine trucks arriving at the site prior to the opening of the mine for active hauling operation.
- (s) *Best management practices.* Contractors, sub-contractors, laborers, material men, and their employees using, handling, storing, or producing regulated substances must use the applicable best management practices generally accepted in the industry.
- (t) *Pollution prevention plan.* A Pollution Prevention Plan must be approved by the County and kept on the mine site. The plan must address potential sources of contamination and provide Best Management Practices (BMPs) to avoid on-site and off-site surface water and groundwater contamination. The plan must include an inspection program to ensure the proper operation of the implemented BMPs and contaminant spill containment and disposal procedures.
- (u) *Deviations and variances.* A deviation or variance from the design standards may be granted only through the MEPS approval process except as otherwise expressly provided in this section.

(Ord. No. [08-21](#), § 2, 9-9-08)

MEMORANDUM

FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

TO: Local Planning Agency
Members

DATE: January 17, 2019

FROM: Audra M. Ennis 
Zoning Manager

RE: **Land Development Code (LDC) Amendments**
Chapter 12, Resource Extraction

On November 17, 2015, the Board of County Commissioners (BoCC) directed staff to identify amendments to the Lee Plan and Land Development Code to align with the BoCC's strategic planning initiatives, streamline, eliminate potential liabilities, reduce redundancy/conflict within and between the Lee Plan and Land Development Code, and relocate regulatory provisions to the Land Development Code.

The attached LDC amendments are intended to implement the pending amendments to the resource extraction and limerock mining provisions of the Lee Plan (CPA2018-10014) prepared in accordance with this direction. The amendments establish a requirement for a mandatory public information meeting (Policy 10.2.8) to provide an additional public input opportunity, increase the setback requirements from residential property lines consistent with County consultant recommendations on recent mining cases, and clarify the deviation and variance approval process as it applies to Chapter 12.

Staff recommends that the LPA find the proposed amendments **CONSISTENT** with the Lee Plan.

Sec. 12-108. - Approval process for mine excavation planned development.

Staff Note: Add provision requiring public information meeting consistent with Lee Plan amendments.

- (a) *Process objective.* The objective of this process is to provide a unified process based upon comprehensive information submitted for review of both the use and development rights. The process is designed to minimize review and resubmittal time frames as well as the time elapsing between approval of the proposed mining activity and actual resource extraction on the mine site.
- (b) *Effect of Chapters 10 and 34.* The process and resulting approvals are not subject to the provisions in Chapter 10 or Chapter 34 unless specifically stated.
- (c) *Mandatory pre-application meeting.* The applicant must attend a pre-application meeting with appropriate County staff prior to submittal of the MEPD application. Appropriate County staff representatives from the following departments must be in attendance at this meeting: Zoning, Development Services, Department of Transportation, Natural Resources and Environmental Sciences; and local representatives from the Department of Environmental Protection, Florida Department of Transportation, South Florida Water Management District and the Army Corps of Engineers should also be invited to attend. During the meeting the applicant must be prepared to discuss the following topics: location of the project, extent/boundaries of the mine project, size of mine, depth of the mine, amount of material the applicant anticipates will be excavated over the life of the mine, proposed duration of mine activity, mine design alternatives including cell mining, potential associated mine activities, phasing, water issues, transportation impacts, watershed boundaries, habitat issues, environmental issues, water monitoring, surrounding uses, Lee Plan compliance, and state and federal permit issues. The applicant must bring maps and other documentation to facilitate discussion with respect to these issues. Subsequent to the meeting, the County will provide the applicant with a memorandum outlining issues relevant to the applicant's future submittal. This memorandum is intended to assist the applicant in preparing the formal submittal and does not confer any specific rights to the applicant with respect to approvals or submittals.
- (d) *Mandatory public information meeting.* The applicant must hold a public information meeting at a location within three miles of the affected Community Plan area prior to submittal of the MEPD application. The applicant must provide a meeting space and any security measures adequate to accommodate the projected attendance. Advance notice of the meeting must be published in a publication of local distribution at least ten (10) calendar days prior to the meeting, with proof of publication provided to the Department of Community Development at the time of application. At the meeting, the applicant must present a general overview of the proposed MEPD and provide the opportunity for public input. A meeting summary document containing the following information must be submitted at the time of application: the date, time, and location of the meeting; a list of attendees; a summary of concerns or issues raised during the meeting; and the applicant response to concerns or issues raised.
- (de) *Mine Excavation Planned Development (MEPD) approval.* The MEPD approval is issued by the Board of County Commissioners based upon the recommendations of the County staff and Lee County Hearing Examiner in accordance with sections 34-83 and 34-145(d). A hearing before the Board of County Commissioners will be scheduled after the applicant submits a MEPD application on the form specified by the County, achieves sufficiency for hearing before the Hearing Examiner, and obtains a recommendation from the Hearing Examiner to the Board for consideration at the end of a regular Board Zoning agenda day. The specific Board hearing date will be determined by County staff.

Unlike typical chapter 34 zoning approvals, the MEPD approval will encompass and be based upon zoning issues as well as technical information and detail traditionally reserved for review under chapter 10. The Board's decision with respect to the MEPD application will be set forth in a

resolution, along with the findings and conclusions applicable to the approval or denial. A resolution approving the MEPD will include conditions applicable to the mine operation along with a detailed set of plans for site development and subsequent mine operation activity.

- (ef) *Mine development order (MDO)*. The MDO is intended to address all on-site and off-site improvements necessary to carry out the mine operation as approved by the Board and is based upon the conditions and exhibits that constitute the MEPD resolution. Therefore, the County encourages concurrent submittal and review of the MEPD and MDO applications in order to achieve the time efficiencies anticipated by this mine permitting process.

Review of the MDO application requires the County staff to verify that the site construction plans accurately and substantively reflect the conditions of the MEPD approval. The applicant may not propose substantive changes or amendments to the MEPD approval resolution through the MDO process. However, the Director has the discretion to administratively approve, as part of the MDO, nonsubstantial changes to the MEPD approval necessary to achieve the intent of the MEPD approval as granted by the Board.

MDO applications and submittals will be processed in the manner set forth in section 10-108 through 10-110.

A MDO will not be issued to allow activity within an area under Army Corps of Engineers' jurisdiction, as identified by the permit application submitted to the State/Federal agency, prior to obtaining the necessary State/Federal approvals.

- (fg) *Mine operation permit (MOP)*. A MOP approval allows the mine operator to commence off-site hauling, and to place into use accessory operations on the mine site such as concrete and asphalt batch plants. The items that must be complete prior to the issuance of a MOP approval will be specified in the MEPD resolution and the MDO approval.

On-site and off-site improvements and related documents that will typically precede issuance of a certificate of compliance under the MDO, which results in the issuance of the MOP and allows off-site hauling of extracted resources or operation of accessory mine facilities, may include, but are not limited to:

- (1) Installing off-site turn lanes and other on-site roadway improvements.
- (2) Constructing on-site truck staging area.
- (3) Installing truck wash and tire wash facilities.
- (4) Constructing on-site paved ingress/egress roads from the front gate to the scale house.
- (5) Installing on-site groundwater and surface water monitoring wells.
- (6) Installing pollution contamination containment structures and devices.
- (7) Installing stormwater pollution prevention devices such as silt barriers and turbidity control devices as required.
- (8) Approval of sureties related to pavement maintenance, reclamation etc.
- (9) Constructing perimeter berms and buffers.
- (10) Installing dewatering hydraulic recharge trenches and staff gauges for monitoring water elevation in trenches.
- (11) Compliance with all conditions of the ERP and water use permits relative to excavation activities.
- (12) Approval of a transportation impact mitigation plan.
- (13) Installation of required permanent traffic count stations.
- (14) Installation of utilities.
- (15) Recording conservation easements.

(16) Other items required under conditions of the MEPD.

The MOP approval will be contained in the certificate of compliance issued by the Director with respect to full compliance with the MDO approval. The MOP will be issued only after review of all required applicant certifications (engineer, landscape architect, etc) and verification that all MDO permit requirements are complete based upon County mine site inspections. Inspections will be performed by appropriate County departments to verify completion in the manner set forth in chapter 10 as applicable to the issuance of a development order certificate of compliance. The MOP is valid for ten years. The date the MOP is issued will establish the effective date for purposes of determining when the MOP must be renewed.

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(Ord. No. [08-21](#), § 2, 9-9-08; Ord. No. [11-08](#), § 5, 8-9-11)

Sec. 12-113. - Site design requirements.

Staff Note: Adjust setback to residential property line in subsection (c) to ensure compatibility consistent with recent cases. Clarify deviation and variance applicability. Modify language for consistency throughout subsection and strike adjacent to ensure all properties within setback area receive equal treatment.

- (a) *Design Standards.* Mining activities will be subject to the following design standards. The Board of County Commissioners may modify these standards as a condition of approval when in the public interest, or where they determine a particular requirement unnecessary due to unusual circumstances.
- (b) *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.
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- (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.

(c) *Setbacks for excavation site.*

(1) Excavations are prohibited within:

- a. 150 feet of an existing street right-of-way line or easement; and
- b. 150 feet of any private property line under separate ownership.
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In all cases, the most restrictive setback will apply.

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To allow flexibility, the general area of accessory buildings, structures and processing facilities must be shown on the site plan with the appropriate setbacks noted.

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- (j) *Maximum depth.* The Board of County Commissioners will establish maximum excavation depths and mining activity depth after reviewing the findings and recommendations of the South Florida Water Management District and County staff, as applicable. The permitted depth may not exceed the depth permitted by the South Florida Water Management District or County staff, as applicable and may not penetrate through impervious soil or other confining layer that presently prohibits intermingling of two or more aquifers.
- (k) *Certificate to dig; historic management plan.* When applicable, an archaeological/historic resources certificate to dig must be obtained from the County and submitted as part of the application. Florida Master Site File forms for historical or archaeological resources, facade or other historic or scenic easements related to the subject property or reports prepared by a professional archaeologist as may be required by chapter 22 must be submitted to the Director.
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Created marsh wetland littoral zone areas may be counted towards the on-site indigenous preservation requirements.

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The created marsh wetland littoral zone, indigenous preserves, replanted indigenous areas, preserved and restored flowways, buffers, and open space used to meet County requirements must be maintained in perpetuity even with a change in land use.

- (n) *Invasive Exotic Removal.* An invasive exotic removal plan must be adopted as part of the MEPD approval that is acceptable to environmental sciences. The removal may be phased with long term maintenance continuing in perpetuity. The invasive exotics to be removed must be consistent with section 10-420(h).
- (o) *Buffers.* Buffers are required in accordance with the following standards.
 - (1) The following buffers must be provided when the mine property abuts the listed use or zoning district, whichever is most restrictive:
 - a. *Right-of-way:*
 - 1. Minimum 50 feet width, maintained at natural grade;
 - 2. Every 100 feet of the right-of-way buffer must consist of:
 - Ten ten-foot trees with two-inch caliper and four-foot spread
 - Ten 5-foot trees with one-inch caliper and two-foot spread
 - 100 native shrubs 24 inches in height
 - 3. 50 percent of the required trees must be native pines; 30 percent must be large native canopy trees (e.g. live oaks); and 20 percent native palms or appropriate native wetland vegetation.
 - b. *Residential:*
 - 1. Minimum 150 feet width, maintained at natural grade;
 - 2. Every 100 feet of the residential buffer must consist of:
 - Fifteen ten-foot trees with two-inch caliper and four-foot spread
 - Ten five-foot trees with one-inch caliper and two-foot spread
 - 150 native shrubs 24 inches in height
 - 3. 50 percent of the required trees must be native pines; 30 percent must be large native canopy trees (e.g. live oaks); and 20 percent native palms or appropriate native wetland vegetation.
 - c. *Agricultural:*
 - Minimum 50-foot width, maintained at natural grade.
 - d. *Conservation Lands:*
 - 1. Minimum 100-foot width, maintained at natural grade;
 - 2. Every 100 feet of the conservation lands buffer must consist of:
 - Ten ten-foot trees with two-inch caliper and four-foot spread
 - Ten five-foot trees with one-inch caliper and two-foot spread
 - 100 native shrubs 24 inches in height
 - 3. Seeded with native herbaceous plants.
 - (2) *Standards applicable to all Buffers.*

- a. Vegetation must be allowed to grow to natural height and form. Trimming is limited to health and safety maintenance pruning (i.e. shrubs, trees, and palms may not be hedged or formally shaped).
 - b. Buffer plantings must occur at grade, unless otherwise conditioned within the MEPD resolution.
 - c. Existing native vegetation may be used to meet the buffer requirements.
 - d. The County may grant a request to use smaller plant material, as long as the equivalent overall height is achieved per linear foot.
 - e. Buffer plants may not be installed in a straight line. Plantings must be installed in a random fashion throughout the width of the buffer to mimic a natural system.
 - f. The Director has the discretion to require a more restrictive buffer when deemed necessary for compatibility in accord with the following:
 - 1. If a berm is deemed necessary by the County, it must be located at the distance closest to the mine within the buffer. Berms may not exceed 3:1 slope and must be limited to a maximum height of eight feet.
 - 2. If any portion of the buffer plantings is to occur on the berm, a specific condition must be included in the MEPD resolution or MDO approval.
 - g. Buffers must be installed prior to issuance of a MOP (via final MDO certificate of compliance) and prior to the excavation of materials for hauling off-site.
 - h. Created marsh wetland littoral zone areas, on-site indigenous preserve areas and wildlife habitat areas may be counted towards the buffer area requirements.
- (p) *Wildlife habitat.* In order to provide interconnectivity of wildlife habitat areas, including Florida panther and Florida black bear habitat, and to allow these large mammals to move locally within their range, projects located within any USFWS Florida panther protection zone must be designed to allow movement of Florida panther and Florida black bear through indigenous preserves or appropriately planted buffer and open space areas. If existing adjacent uses are not suitable for Florida panther or Florida black bear, then a deviation from this requirement may be requested during the MEPD application process.
- (1) Local wildlife habitat areas must be a minimum 300 feet wide, designed to allow mammals to traverse the project property, and connect to adjacent preserves or conservation lands that are existing or anticipated to occur in the future.
 - (2) Prior to the issuance of a MOP, the 300-foot wide area must be planted with a continuous native shrub hedge (33 shrubs per 100 linear feet; minimum three-gallon container size) along the perimeter of the habitat area and a minimum of 20 native trees per 100 linear foot clustered (minimum ten trees per cluster; minimum 7-gallon container size) within the habitat area to provide cover. Existing native vegetation may be used to meet the planting requirement.
 - (3) The wildlife habitat plantings may count toward any buffer, general tree, or indigenous replanting requirement if they meet the minimum standards for buffers, general trees, or indigenous replanting.
 - (4) Preferred vegetation includes, but is not limited to:

Trees: live oak (*Quercus virginiana*), laurel oak (*Quercus laurifolia*), south Florida slash pine (*Pinus elliotii var. densa*), cypress (*Taxodium distichum*; *Taxodium ascendens*)

Shrubs: wax myrtle (*Myrica cerifera*), cocoplum (*Chrysobalanus icaco*), saw palmetto (*Serenoa repens*), Florida privet (*Forestiera segregata*).
 - (5) Created marsh wetland littoral zone areas, on-site indigenous preserve areas and buffer areas may be counted towards the wildlife habitat area requirements.

- (q) *Truck and tire wash.* The use of a truck and tire wash system is mandatory for all projects. The truck and tire wash must:
- (1) Be installed on the property with a minimum setback of 150 feet from the project boundary;
 - (2) Be located on the paved access connection at least 100 feet from the interior terminus of the paved access connection; and
 - (3) Provide water quality treatment and recycling for the truck and tire wash water.
- (r) *Truck staging.* Truck staging within limits of either public or private roads external to the mine site is prohibited. The mine is required to provide adequate on-site stacking space to accommodate staging of mine trucks arriving at the site prior to the opening of the mine for active hauling operation.
- (s) *Best management practices.* Contractors, sub-contractors, laborers, material men, and their employees using, handling, storing, or producing regulated substances must use the applicable best management practices generally accepted in the industry.
- (t) *Pollution prevention plan.* A Pollution Prevention Plan must be approved by the County and kept on the mine site. The plan must address potential sources of contamination and provide Best Management Practices (BMPs) to avoid on-site and off-site surface water and groundwater contamination. The plan must include an inspection program to ensure the proper operation of the implemented BMPs and contaminant spill containment and disposal procedures.
- (u) *Deviations and variances.* A deviation or variance from the design standards may be granted only through the MEPP approval process except as otherwise expressly provided in this section.

(Ord. No. [08-21](#), § 2, 9-9-08)

MEMORANDUM
FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

TO: Local Planning Agency
Committee Members

DATE: January 17, 2019

FROM: Audra M. Ennis 
Zoning Manager

RE: Biennial Land Development Code (LDC) Cleanup – 2018 Cycle, Part 2

On November 17, 2015, the Board of County Commissioners (BoCC) directed staff to identify amendments to the Lee Plan and Land Development Code to align with the BoCC's strategic planning initiatives, streamline, eliminate potential liabilities, reduce redundancy/conflict within and between the Lee Plan and Land Development Code, and relocate regulatory provisions to the Land Development Code. Community Development Staff has accumulated a number of miscellaneous amendments to the Land Development Code that are proposed in this document for committee review.

This set of Land Development Code amendments addresses changes to Chapters 6, 10, 14, and 34.

Chapter 2 – ADMINISTRATION

ARTICLE IV. – BONUS DENSITY

DIVISION 2. – BONUS DENSITY PROGRAM

Sec. 2-146. - Minimum requirements.

(a) *remains unchanged.*

(b) Minimum requirements:

(1) The additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road ~~as required by Lee Plan Policy 39.1.4~~; and

(2) *thru (4) remain unchanged.*

Remainder of section unchanged.

Staff Note – Remove erroneous Lee Plan Policy reference.

CHAPTER 6 – BUILDINGS AND BUILDING REGULATIONS

ARTICLE II. CODES AND STANDARDS

DIVISION 1. GENERALLY

Sec. 6-47. - Building relocation permit.

(a) Compliance with applicable regulations; time limit for leaving buildings on street.

(1) When a building is moved to any location within the unincorporated area of the County, the building or part thereof must immediately be made to conform to all the provisions of the latest adopted zoning ordinance and other applicable County regulations.

(2) Any building being moved for which a permit was granted may not remain within a public right-of-way for more than 48 hours.

(b) Contents of application. Any person desiring to relocate or move a building must first file a written application on an official form provided by the Department. The application must include the following information furnished by the applicant and must be accompanied by the required application fee:

(1) The existing and proposed use of the building.

(2) The STRAP number and street address for both the existing and proposed location of the building.

(3) A certified survey of the proposed site with ground elevations, flood zone and required elevation, if in a V or A flood zone area.

(4) A plot plan showing lot dimensions, setbacks, existing structures, and the location of the proposed building drawn to scale. The plot plan must depict the roof overhangs and the foundations of all existing and proposed buildings and structures.

(5) Construction details, drawn to a scale of no larger than one-half inch equals one foot and no smaller than one-eighth inch equals one foot, including the following:

- a. Foundation layout with connection details.
 - b. Floor plan, existing and proposed.
 - c. Mechanical plans, including air conditioning, electric system and plumbing plans.
 - d. Elevations, front, side and rear.
 - e. Flood elevation, if applicable.
- (6) Current termite inspection by licensed pest controller.
- (7) Water and sewer approvals from appropriate agencies.
- (8) Photographs showing all sides of the building and the site where the building is proposed to be located.
- (9) Proof of notice to all owners of property abutting or across the street from the site where the building is proposed to be located.
- (c) Inspection of building. The building will be inspected by the County to determine:
- (1) If the building can be brought into compliance in all respects with this chapter and other County regulations pertaining to the area to which the building is to be moved.
 - (2) If the building is structurally sound and either complies with the Standard Building Code and other codes adopted by the County or can be brought into compliance with such codes.
- (d) Rejection of application. An application must be rejected if:
- (1) The building fails to meet the inspection criteria detailed in subsection (c) of this section;
 - (2) In the opinion of the Director, the moving of any building will cause serious injury to persons or property;
 - (3) The building to be moved has deteriorated due to fire or other element to more than 50 percent of its assessed value; or
 - (4) The moving of the building will violate any of the requirements of the Standard Building Code, this chapter or other applicable County regulations.
- (e) Approval of application. Upon approval of the application for building relocation, a licensed building relocation contractor representing the applicant must:
- (1) Apply for and receive all required permits from the Department of Transportation, County and/or state;
 - (2) Pay the required fees and obtain the building relocation permit and appropriate sub-permits.

Secs. 6-4748-6-70. Reserved.

Staff Note - Relocated from 34-209.

CHAPTER 10 – DEVELOPMENT STANDARDS

ARTICLE I. IN GENERAL

Sec. 10-1. - Definitions.

- (a) remains unchanged.
- (b) Definitions. Except where specific definitions are used within a specific section of this chapter for the purpose of such sections, the following terms, phrases, words and their derivations will have the meaning given in this subsection when not inconsistent with the context:

Lot coverage means that portion of a lot area, expressed as a percentage, occupied by all impervious surfaces.

Staff Note – Remove definition inconsistent with chapter 34.

ARTICLE II. – ADMINISTRATION

DIVISION 2. – DEVELOPMENT ORDERS

Sec. 10-102. - Employment of engineers and design consultants.

An engineer shall be employed by the developer to design all required improvements such as streets, drainage structures, drainage systems, bridges, bulkheads, water and sewage facilities, etc. All plans, drawings, reports and calculations shall be prepared, signed and sealed by the appropriate licensed professional, such as engineers, architects, landscape architects, land surveyors and attorneys, registered in the state. Other specialized consultants, such as environmental consultants, archaeologists, etc., may be required to assist in the preparation of the plans, drawings, reports and other documents required as development order submittals. Successor engineers must follow the procedures outlined in FAS 61G15-27.001 to continue use of sealed contract documents by any prior professional engineer.

DIVISION 2. – DEVELOPMENT ORDERS

Sec. 10-103. – Concurrent zoning and development order applications. ~~Prerequisite zoning approvals for development order submittals.~~

- ~~(a) Any applicant who intends to submit an application for development order approval on a project that was zoned RPD, MHPD, RVPD, CPD, CFPD, IPD or AOPD prior to December 2, 1991, must submit four complete sets of plans and documents to the zoning review staff, who will review the submittals for full compliance with the adopted master concept plan and any conditions of approval. Plans may be reviewed concurrently for compliance with this chapter and with the terms of the zoning approval. No development orders may be issued for the project in question until the plans have been determined to be in compliance with the terms of the zoning approval. Specific reference to the districts listed in this section and the required review does not obviate the need to have plans reviewed for zoning compliance for conditions placed on other types of zonings, PUDs, special exceptions, variances and special permits.~~
- ~~(b) All applications for development orders on property zoned RPD, MHPD, RVPD, CPD, CFPD, IPD, AOPD or MPD after December 2, 1991, must be reviewed for compliance with the approved master concept plan and all other conditions of approval as part of the development order review process.~~
- ~~(c) All applications for development orders must be consistent with zoning. For developments that require rezoning, the applicant may make application for a development order and the rezoning simultaneously. The development order will be reviewed for compliance with the requirements of this chapter and the requirements of chapter 12 and 34 for the proposed zoning of the property. No approval of the development order will be granted until the proposed rezoning is approved and a zoning resolution signed by the chairman of the Board of County Commissioners is issued.~~

Staff Note – Simplify language.

Sec. 10-108.1. - Payment of taxes.

No development orders or plats ~~will shall~~ be approved for the subject property if ad valorem taxes or assessments against the property are due and owing delinquent or if there are outstanding tax certificates issued for the property.

Staff Note –Revise to match administrative code.

Chapter 14 – Environment and Natural Resources

ARTICLE III. – WELLFIELD PROTECTION

Sec. 14-243. - Building permits and occupational licenses.

(a) *Review by division.*

(1) *thru (3) remain unchanged.*

(4) No request for a rezoning, special exception, ~~special permit~~, development order, certificate of occupancy, building permit, change of occupancy or occupational license for any activity regulated by this article will be issued that is contrary to the restrictions and provisions provided in this article. Permits or occupational licenses issued in violation of this section confer no right or privilege on the grantee, and such invalid permits or licenses will not vest rights.

Remainder of section unchanged.

CHAPTER 34 - ZONING

ARTICLE I. IN GENERAL

Sec. 34-2. - Definitions.

Accessory apartment means a living unit, without cooking facilities, which is subordinate and attached to a single-family residence and could be made available for rent or lease.

Accessory dwelling unit means a living unit subordinate to a single-family home which is either attached with cooking facilities, or detached with or without cooking facilities, and could be made available for rent or lease.

Agricultural uses includes but is not limited to farming, horticulture, pasturage, forestry, citrus and other fruit groves, greenhouses and nurseries, truck farms and dairy farms, commercial fish, frog or poultry hatcheries, and raising of hogs and other farm animals. ~~Lumbering or harvesting of cypress (Taxodium spp.) is not permitted except by special exception.~~

Lot measurement, width.

(1) *remains unchanged.*

(2) For lots lawfully created after January 28, 1983, width of a lot is considered to be the distance between the side lot lines (or a front and side lot line for corner lots) as measured along the minimum required street setback line. See section 34-2221(4) for exceptions.

Variance means a departure from the provisions of this chapter or from any County ordinance (excluding building codes) relating to building and other structural setbacks, lot dimensions such as width, depth or area, structure or building height, open space, buffers, parking or loading requirements, lot coverage, impervious areas, landscaping and similar type regulations. ~~Variations must be approved by the Hearing Examiner based on the~~

~~findings established in section 34-145(b)(3). If authorized by section 34-268, the Director may administratively approve variances based on the criteria established in section 34-268(b).~~

Staff Note - Add definitions for accessory apartment and dwelling unit; removed procedural/permissibility language from definitions.

ARTICLE II. ADMINISTRATION

DIVISION 4. HEARING EXAMINER

Sec. 34-144. - Conduct of hearings; reports and records.

(a) *remains unchanged.*

(b) *Hearings.* Public hearings will be scheduled, noticed and conducted pursuant to applicable Administrative Codes and this Code. A hearing will not take place unless a staff report is delivered to the Applicant, the Hearing Examiner, and made available to the public at least 14 days prior to the public hearing for rezoning cases and at least 7 days prior to the public hearing for variance and special exception cases.

(c) *through (e) remain unchanged.*

Sec. 34-145. Functions and authority.

(a) *through (b) remain unchanged.*

(c) Special exceptions.

(1) *through (2) remain unchanged.*

(3) Findings/review criteria.

a. through b. remain unchanged.

c. In the case of private aircraft landing facilities, the Hearing Examiner must make a finding that the location of the proposed facility will not interfere with the operation of any existing aircraft landing facilities, airports or heliports.

Staff Note - Relocated from 34-203.

DIVISION 5. DEPARTMENT OF COMMUNITY DEVELOPMENT

Sec. 34-171. - Appointment of Director.

The County ~~Manager will Administrator shall~~ appoint the Director of the Department of Community Development. ~~He shall hold this position at the pleasure of the County Administrator.~~

Sec. 34-172. - Powers and duties.

(a) *Administration of zoning regulations.* ~~The administration of this chapter and chapter 12 is maintained in the Department of Community Development.~~ The Director is hereby authorized, empowered and directed to administer all the provisions of this chapter and any subsequent amendments thereto.

(b) *through (e) remain unchanged.*

(f) Authority to issue cease and desist orders. The Director, after consultation with the County Attorney, has the authority to issue cease and desist orders on property being used in violation of the provisions of this Code. The cease and desist order may continue until the violation is resolved to the satisfaction of the County.

(g) Authority to issue temporary use permits. The Director is authorized to permit temporary uses upon receipt of a complete application.

Staff Note - Remove unnecessary language, relocate language from 34-266, and add authority to permit temporary uses not covered under (b) – (e).

Sec. 34-173. Authority to permit uses pending a zoning action.

(a) The Director is authorized to permit proposed uses that are not permitted on a subject parcel for a period of not more than 180 days under the following circumstances:

(1) An application for a rezoning or a special exception has been filed for the subject parcel that would, if approved, make the requested use a permitted use;

(2) The requested rezoning or special exception, in the opinion of the Director, is clearly compatible with the neighboring uses and zoning and is consistent with the Lee Plan;

(3) No new principal structures are to be constructed on the subject property; and

(4) The applicant agrees in writing that the proposed use will cease within 180 days unless the Board of County Commissioners or Hearing Examiner, whichever is applicable, has rendered a final decision approving the requested rezoning or special exception. At the discretion of the Director, the approval may be extended up to an additional 90 days.

(b) The Director's decision to allow the use does not guarantee the use will ultimately be approved through the applicable public hearing process.

(c) Upon expiration of the approval, the property may only be used in compliance with the underlying zoning regulations.

(d) Decisions by the Director pursuant to this section are discretionary and may not be appealed pursuant to subsection 34-145(a).

Staff Note - Relocated from 34-267

Sec. 34-174. Authority to approve administrative actions.

(a) Administrative Variances.

(1) Authority. The Director is authorized to administratively approve variances of the following:

a. Street, rear, side, or waterbody setbacks to allow:

1. Remodeling of, or additions to, existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:

i. An increase in the height of the structure; or

ii. A further diminution of the setback. The Director may approve bay windows, chimneys and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.

- 2. Construction of access appurtenant to an existing structure for disabled persons.
 - 3. Replacement of stairs or decking that provide access into an existing dwelling unit.
 - 4. Buildings or structures that:
 - i. Encroach into the required setbacks due to minor errors at time of construction.
 - ii. Are not in compliance with current setback regulations and can be proven to have been permitted.
 - 5. Construction of a single-family dwelling unit on lots with an approved Minimum Use Determination, provided the lot coverage does not exceed 45 percent.
- b. Requirements of chapters 10, 30, 33, and 34 necessary for development of property subject to a Lee County initiated eminent domain proceeding pursuant to section 1-16.
 - c. Setbacks in conventional zoning districts where the encroachment is 10% or less of the minimum required setback for proposed buildings.
 - d. Chapter 34 requirements that are necessary to facilitate development of existing nonconforming buildings or structures that have lost their nonconforming status pursuant to section 34-3242(2) and/or chapter 30 requirements for signs that have lost their nonconforming status pursuant to section 30-55(b)(2). Administrative variances granted pursuant to this section may only be granted to the extent that the variance is the minimum that will bring the site into compliance with this Code given the existing site constraints. Nonconforming open space, buffering and landscaping are subject to the regulations of section 10-416 and must be brought into conformance to the maximum extent possible.
 - e. Landscaping required by section 34-1743(b)(3) to allow existing, required or optional nonconforming residential project walls to be repaired or replaced.
 - f. Property development regulations for all religious facilities and places of worship provided in section 34-2051(a) for properties zoned residential and located in a platted subdivision.
 - g. Requirements of chapters 30, 33 and 34, at the discretion of the Director, where it can be proven the variance will allow the property to be developed in a manner which furthers the intent of the Lee Plan and will not diminish the public's health, safety, and welfare.
- (2) Findings/review criteria. Before approving any administrative variance, the Director must find the following review criteria are satisfied:
- a. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question;
 - b. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to the property; and
 - c. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (b) Administrative Approval of On-Premises Consumption of Alcoholic Beverages.
- (1) Authority. The Director is authorized to administratively approve the sale or service of alcoholic beverages for consumption on-premises when in conjunction with the uses provided in section 34-1264(a)(1).

(2) Findings/review criteria. Before approving the sale or service of alcoholic beverages for consumption on-premises, the Director must find there will be no apparent adverse impact on surrounding properties within 500 feet of the premises.

(c) Administrative Approval of New Antenna Supporting Structures.

(1) Authority. The Director is authorized to administratively approve new antenna supporting structures as provided by Article VII, Division 11 of this chapter.

(2) Findings/review criteria. Before approving new antenna supporting structures, the Director must make all of the following findings (or conclude that a finding is not applicable):

a. The applicant is not able to use existing wireless communications facility sites in the geographic search area; and

b. The applicant has agreed to rent or lease available space on the antenna-supporting structure, under the terms of a fair-market lease, without discrimination to other wireless communications service providers; and

c. The proposed antenna-supporting structure will not be injurious to historical resources, or reduce the quality and function of natural or man-made resources; and

d. The applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities.

(d) Administrative Approval of Community Gardens.

(1) Authority. The Director is authorized to administratively approve community gardens when in compliance with section 34-1716.

(2) Findings/review criteria. Before approving a community garden, the Director must find there will be no apparent adverse impact on adjacent properties.

(e) Administrative Approval of Model Homes, Model Units and Model Display Centers.

(1) Authority. The Director is authorized to administratively approve model homes, model units and model display centers when in compliance with 34-1954 or 34-1955, as applicable.

(2) Findings/review criteria. Before approving model homes, model units or model display centers, the Director must find the following review criteria are satisfied:

a. For model homes and model units, the property is located within a new development under unified control.

b. For model display centers, the property is zoned RPD, MHPD, RVPD or MPD.

(f) Administrative Approval of Reduced Parking for Non-Residential Uses.

(1) Authority. The Director is authorized to administratively approve a reduction to the minimum required number of parking spaces for non-residential uses by a maximum of ten percent.

(2) Findings/review criteria. Before approving any administrative reduction to the minimum required number of parking spaces for non-residential uses, the Director must find the following review criteria are satisfied:

a. One or more of the conditions provided in section 34-2020(c) exist; and

b. There will be no adverse impact on surrounding properties or on the public health, safety and welfare.

(g) Administrative Approval for Existing Commercial and Industrial Developments.

(1) Authority. The Director is authorized to administratively approve relief from minimum required setbacks and lot area, width and depth to allow subdivision of commercial and industrial lots.

(2) Findings/review criteria. Before approving a subdivision of existing commercial or industrial developments, the Director must find the following review criteria are satisfied:

a. The overall development complies with all applicable zoning requirements notwithstanding the noncompliance with property development regulations in chapter 34, and chapter 10 of the individual lots within the subdivision.

b. In the event that the individual lots will not have direct access to a public street, the applicant has demonstrated how access to such lots will be accomplished via common areas.

c. In the event individual lots will not comply with minimum open space requirements, the applicant has demonstrated how the required open space requirement for the overall development will be satisfied via common areas.

d. All common elements of the overall development are subject to unified control and will be perpetually maintained through a property owners association. The common elements include, but are not limited to, streets and accessways, off-street parking, water management facilities, buffering, fences or walls, and open space.

e. There will be no apparent deleterious effect upon surrounding properties or the immediate neighborhood.

(h) Administrative Approval of 86-36 Lot Combination.

(1) Authority. The Director is authorized to administratively approve amendments to site plans for mobile home or recreational vehicle parks approved by Lee County Ordinance 86-36.

(2) Findings/review criteria. Before approving an amendment to a site plan approved by Ordinance 86-36, the Director must find the following review criteria are satisfied:

a. The amended site plan does not increase the number of lots in the park.

b. There will be no adverse impact on surrounding properties.

(i) Administrative Approval of Deviation(s) from Chapters 10 and 33.

(1) Authority. The Director is authorized to administratively approve deviations from technical standards in chapter 10, limited to those listed section 10-104, and from certain provisions, as specified, in chapter 33.

(2) Findings/review criteria. Before approving a deviation, the Director must find the following review criteria are satisfied:

a. For chapter 10 deviations:

(1) The request is based on sound engineering practices (not applicable to sections 10-352, 10-353 and Division 7, Article III, chapter 10);

- (2) The request is no less consistent with the health, safety and welfare of abutting landowners and the general public than the standard from which the deviation is being requested;
- (3) The granting of the deviation is not inconsistent with any specific policy directive of the Board of County Commissioners, any other ordinance or any Lee Plan provision; and
- (4) For Division 7, Article III, chapter 10, the required facility would unnecessarily duplicate existing facilities;
- (5) For sections 10-352 and 10-353, the utility that would otherwise serve the development cannot provide the service at the adopted level of service standard due to an inadequate central facility.

b. For chapter 33 deviations, additional criteria, if specified within chapter 33, must be met.

(j) Administrative Amendment to a Planned Development.

- (1) Authority. The Director is authorized to administratively approve an amendment to a planned development pursuant to section 34-380.
- (2) Findings/review criteria. Before approving any administrative amendment to a planned development, the Director must find the request:
 - a. Does not increase height, density or intensity of the development, except as permitted in chapter 2.
 - b. Does not result in the substantial underutilization of public resources and public infrastructure committed to the support of the development;
 - c. Does not result in a reduction of total open space provided on the master concept plan by more than ten percent;
 - d. Does not decrease the amount of indigenous native vegetation preservation or open space areas below the amount required by the Code;
 - e. If changes to the buffer or landscaping areas are proposed, equivalent or better (by comparison with the approved Master Concept Plan) landscaping or buffering is provided;
 - f. Does not adversely impact surrounding land uses; and
 - g. Is consistent with all applicable provisions of the Lee Plan and land development regulations in effect at the time of the amendment request.

(k) Administrative Amendment to a Planned Development located in the Mixed Use Overlay.

- (1) Authority. The Director is authorized to administratively approve an amendment to a planned development on property located in the Mixed Use Overlay to facilitate redevelopment or infill development.
- (2) Findings/review criteria. Before approving any administrative amendment to a planned development, the Director must find the request:
 - a. Will have a positive impact on transportation facilities;
 - b. Will provide for connections to adjacent uses;
 - c. Will allow for urban forms of development and a variety of uses;

- d. Will not result in the substantial underutilization of public resources and public infrastructure committed to the support of the development;
- e. Will not decrease the amount of indigenous native vegetation or preservation area below the amount required by Code;
- f. Will not adversely impact surrounding land uses; and
- g. Is consistent with applicable provisions of the Lee Plan and land development regulations in effect at the time of the amendment request.

(l) Decisions of Director.

- (1) The Director may administratively approve a request in accordance with the provisions above with conditions as necessary for the protection of the health, safety, and welfare of the general public. Conditions must be reasonably necessary to effectuate the intent and purpose of this Code and other applicable regulations.
- (2) Decisions by the Director pursuant to this section are discretionary and may not be appealed in accordance with section 34-145(a).
- (3) If the County determines that an administrative action was approved based on inaccurate or misleading information or if the approval did not comply with this Code when the decision was rendered, then, at any time, the Director may issue a modified approval that complies with the Code or revoke the administrative approval.
- (4) If a request for an administrative action is denied, revoked, or an applicant disagrees with the conditions imposed, the applicant may seek approval by filing an application for public hearing in accordance with section 34-373.

Staff Note - Relocated from sections throughout LDC.

Secs. 34-1753—34-200. - Reserved.

DIVISION 6. APPLICATIONS AND PROCEDURES FOR CHANGES, PERMITS, INTERPRETATIONS AND APPROVALS

Sec. 34-201. General procedure for applications requiring public hearing Application requirements for public hearing and administrative actions.

- (a) *remains unchanged.*
- (b) Abutting properties. All properties within a single application must be abutting unless the Director determines, in his or her sole discretion, that there is a rational relationship between the properties in question.

~~Application submittal and official receipt procedure.~~ The application procedure and requirements in this section apply to all applications for rezoning, special exceptions, and variances, except mine excavation planned developments under chapter 12.

- (1) ~~All properties within a single application must be abutting. The Director may, at his discretion, allow a single application cover non-abutting properties where it is in the public interest, due to the size or scope and nature of the request, and there is a rational continuity to the properties in question.~~
- (2) ~~No application may be accepted unless it is presented on the official forms provided by the Department, or on County approved forms containing the same information.~~
- (3) ~~Before an application may be accepted, it must fully comply with all information requirements enumerated in section 34-202, unless specifically stated otherwise in this chapter.~~

- (4) ~~The applicant must ensure that an application is accurate and complete. Any additional expenses necessitated because of inaccurate or incomplete information will be borne by the applicant.~~
- (5) ~~Upon receipt of the completed application form, all required documents and the filing fee, the Department will begin reviewing the application for completeness or, in the case of planned development applications, begin reviewing the application for sufficiency pursuant to section 34-373(d).~~
- (c) Waivers. Upon written request, on a form prepared by the County, the Director may modify the submittal requirements where it can be demonstrated by the applicant that the submission will have no bearing on the review and processing of the application. The decision of the Director is discretionary and may not be appealed.
- (d) Filing fee. All fees, in accordance with the County's External Fees and Charges Manual, must be paid in full at the time the application is submitted. No review of the application will commence until payment is received.

Staff Note – Remove redundant/relocated language.

Sec. 34-202. - ~~General~~ Submittal requirements for applications requiring public hearing.

- (a) ~~All applications.~~ Every request for actions requiring a public hearing under this chapter must include the following. However, upon written request, on a form prepared by the County, the Director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the Director prior to submitting the application. A copy of the request and the Director's written response must accompany the application and will become a part of the permanent file.
- (a) Submittal requirements for all public hearing applications. All applications for public hearing requests must include the following. Any additional expenses due to inaccurate or incomplete information will be borne by the applicant.
- (1) Application form. Applications will only be accepted on official forms provided by the Department.
 - (2) Ownership interests. An affidavit, signed by the property owner or contract purchaser, must be submitted stating whether a Lee County Employee, County Commissioner, or Hearing Examiner has an ownership interest in the property or any legal entity (corporation, company, partnership, limited partnership, trust, etc.) that has an ownership interest in the property or that has contracted to purchase the property. Disclosure with respect to a beneficial ownership interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, whose interest is for sale to the general public, is exempt from this provision.
 - (3) Applicant's statement. Notwithstanding the requirements of section 34-201(a)(1)a., the applicant must sign a statement, under oath, that he is the owner or the authorized representative of the owner of the property and that he has full authority to secure the approval requested and to impose covenants and restrictions on the referenced property as a result of the action approved by the County in accordance with this Code. This must also include a statement that the property owner will not transfer, convey, sell or subdivide the subject parcel unencumbered by the covenants and restrictions imposed by the approved action.
 - (4) Agent authorization. The applicant may authorize agents to assist in the preparation and presentation of the application. Any agent authorized by the applicant will be deemed to have the authority to bind the property with respect to conditions.
 - (5) ~~(4)~~ Legal description and sketch to accompany legal description. A metes and bounds legal description along with a sketch of the legal description, prepared by a Florida Licensed Surveyor and Mapper, must be submitted, unless the property consists of one or more undivided lots within a subdivision platted in accordance with Florida Statutes, Ch. 177. If the subject property is one contiguous parcel, the legal description must specifically describe the entire continuous perimeter boundary of the property subject to

the zoning action with accurate bearings and distances for every line. If the application seeks to rezone undivided, platted lots, then a complete legal description (i.e. lot, block, subdivision name, public records recording information) of the platted subject property is required. A sketch of the undivided, platted lots to be rezoned is not required. The Director has the right to reject any legal description that is not sufficiently detailed so as to locate the property on County maps.

~~(6) (2)~~ *Boundary survey.* A boundary survey of the subject property must be submitted, unless the property consists of one or more undivided lots within a subdivision platted in accordance with F.S. Ch. 177. The survey must be based upon the title certification submitted in accord with section 34-~~202201(ea)(3)~~ and certified to the present owner as reflected in the title documentation submitted in accordance with section 34-~~202201(ea)(3)~~. The boundary survey must identify and depict all easements affecting the subject property, whether recorded or unrecorded, and all other physical encumbrances readily identified by a field inspection.

All boundary surveys must meet the minimum technical standards for land surveying in the state, as set out in Chapter 5J-17, F.A.C. The survey must be tied to the state plane coordinate system for the Florida West Zone (the most current adjustment is required) with two coordinates, one coordinate being the point of beginning (POB) and the other an opposing corner. The perimeter boundary must be clearly marked with a heavy line and must include the entire area to be developed.

If the subject property consists of one or more undivided lots within a subdivision, then a copy of the subdivision plat may be submitted in lieu of the boundary survey. However, if the dimensions of the subject property differ from those in the original plat, then a boundary survey, including a metes and bounds legal description, will be required.

~~(7) (3)~~ *Certification of title and encumbrances.* Certification of title and encumbrances submitted for property subject to zoning approval must meet the following criteria:

a. through b. remain unchanged.

~~(4) Reserved.~~

~~(8) (5)~~ *Property owners list.* A complete list of all owners of the property ~~subject to this request~~, and their mailing addresses. If multiple parcels are involved, a map showing the owners interest must be provided. ~~The applicant is responsible for the accuracy of the list and map. For County initiated actions only, n~~ Names and addresses of property owners will be deemed to be must be those appearing on the latest current Lee County tax rolls of the County.

~~(9) (6)~~ *Surrounding property owners list and map.* A complete list, map, and one set of mailing labels, of ~~all~~ property owners, and their mailing addresses, for all properties ~~within 500* feet (1,000 feet for wireless communications facilities applications) of the perimeter of the subject property, parcel or the portion thereof, that is the subject of the request. In those instances where fewer than ten owners of property would be notified, the distance must be expanded to include all owners of property within 750 feet (1,250 feet for wireless communication facilities). Names and addresses of property owners must be those appearing on the current Lee County tax rolls. When the application is found sufficient, the applicant is required to submit a new list and mailing labels.~~

~~For the purpose of this subsection, names and addresses of property owners will be deemed to be those appearing on the latest tax rolls of the County at the time of application. The applicant is responsible for the accuracy of such list. When the application is found complete, or in the case of a planned development, sufficient, the applicant is required to submit a new list and mailing labels.~~

~~Applications for wireless communication facilities under section 34-1441, et seq. must include all property within 1,000 feet of the perimeter of the subject parcel.~~

~~*NOTE: In those instances where fewer than ten owners of property would be notified, the distance must be expanded to include all owners of property within 750 feet and 1,250 feet for wireless communication facilities.~~

~~(7) Surrounding property owners map. A map displaying all parcels of property within 500* feet of the perimeter of the subject parcel or the portion thereof that is the subject of the request. This map must reference by number or other symbol the names on the surrounding property owners list. The applicant is responsible for the accuracy of the map.~~

~~* NOTE: In those instances where fewer than ten owners of property would be notified, the distance must be expanded to include all owners of property within 750 feet.~~

(10) Proof of potable water and sanitary sewer availability. A letter from the appropriate utility provider verifying their ability to provide service to the proposed development. If service is not available, the applicant must indicate how the potable water and sanitary sewer needs for the project will be met.

(11) Bonus density. When applicable, the resulting gross residential density and number of bonus density units requested. The application must demonstrate compliance with the review criteria required by section 2-146.

(12) Existing agricultural use affidavit. If the property owner intends to continue an existing agricultural use subsequent to zoning approval, an affidavit signed by the property owner and sworn before a notary must be submitted. The affidavit must consist of (1) a statement as to the specific type and location of the agricultural use(s) existing on the property at the time of the application and (2) a sketch of the property, in metes and bounds, identifying the location and type of ongoing agricultural use(s).

(13) Wireless communication facilities. If a wireless communication facility is a proposed use, the applicant must provide the information required in section 34-1441 et seq.

~~(b) (8) Additional submittal material. Additional information, specific to the type of action(s) requested, is required as follows: Additional material, depending on the specific type of action requested, as set forth in section 34-202(b) and 34-203.~~

(1) Developments of regional impact. Developments of regional impact must comply with F.S. ch. 380.

(2) Planned developments. Planned developments must provide the additional information required by section 34-373.

(3) Rezoning, other than planned developments. A statement explaining the nature of the request, how the property qualifies for the rezoning, and how the request meets the applicable required findings/review criteria set forth in section 34-145(d)(4). This statement may be utilized by the Board of County Commissioners, Hearing Examiner and staff in establishing a factual basis for the approval or denial of the rezoning.

(4) Rezoning of mobile home parks. Rezoning of an existing mobile home park, as defined in F.S. § 723.003, which will result in the removal or relocation of mobile home owners, the applicant must demonstrate compliance with F.S. § 723.083.

(5) Special exceptions. Applications for special exceptions must include the following:

(a) A statement explaining the request, how the property qualifies for the special exception, and how the request meets the applicable required findings set forth in section 34-145(c)(3). This statement may be utilized by the Hearing Examiner and staff in establishing a factual basis for approval or denial of the special exception.

(b) A traffic impact analysis of projected trip generation.

(c) A site plan, drawn to scale, depicting:

1. Location and current use of existing structures.

2. Location of proposed structures and/or uses.
3. Location of existing and proposed road rights-of-way, streets, easements or land reservations.
4. Location of vehicular access to and from the site.
5. Other information required for analysis of the request as determined by the Director.

(d) Additional information is required for the following special exception requests:

1. Solar or wind energy modifications. Evidence that the proposed modifications are the minimum necessary to provide for the solar or wind energy proposal and that the proposed modifications will not adversely affect adjacent properties.
2. On-premises consumption of alcoholic beverages. The type of license requested, a floor plan showing the proposed indoor and outdoor service areas, and if in conjunction with a restaurant, a copy of the menu must be provided.
3. Private aircraft landing facilities.
 - a. Type of facility as set forth in Florida Administrative Code.
 - b. Site plan depicting the proposed location and dimensions of the effective landing length, including the approach zone.
 - c. An affidavit that written notice of the public hearing will be sent by certified mail, return receipt requested, to all airports and municipalities within 15 miles of the proposed facility and to all property owners within 1,000 feet of the property or within the minimum required approach zone, whichever is greater. The applicant will be responsible for sending the written notice and will bear the cost of the notification.

(6) Variances. All applications for a variance must also submit the following:

- (a) A statement that includes the section number and particular regulation from which a variance is requested, how the property qualifies for the variance, and how the request meets the applicable required findings set forth in section 34-145(b)(3).
- (b) A site plan, drawn to scale, detailing:
 1. Existing public streets, easements or other reservations of land within the site;
 2. All existing and proposed structures on the site; and
 3. The location of the proposed variance.
- (c) Any other reasonable information which may be required by the Department which is commensurate with the intent and purpose of this Code.
- (d) Street setbacks on collector and arterial roads. In the case of a variance from required street setbacks on collector and arterial roads, in addition to the above, the following must be submitted:
 1. A modified property owners list and property owners map (see section 34-201(a)(9) and (10)) to show only the names and locations of property owners that abut the perimeter of the subject property.

2. A site plan, drawn to scale, showing:

- i. The location of all proposed structures, easements, rights-of-way and vehicular access onto the property, including entrance gates or gatehouses; and
- ii. The extent of modification from street setbacks requested.

(9) *Filing fee.* All fees, in accordance with the duly adopted fee schedule (see section 34-53), must be paid at the time the application is submitted.

(10) *Compliance with specific planning community requirements.* If the subject property is located in a planning community, the applicant will be required to demonstrate compliance with the requirements applicable to the specific community provided in chapter 33.

~~(b) Additional submittal requirements for owner-initiated applications.~~ In addition to the submittal requirements set forth in (a), every application initiated by a property owner involving a change in the zoning district boundaries, or a request for special exception, deviation or variance, applicable to the property owner's land must include the following:

~~(1) Authority:~~

~~a. Ownership interests.~~ An affidavit, signed by the property owner or specified contract purchaser, must be submitted stating whether a Lee County Employee, County Commissioner, or Hearing Examiner has an ownership interest in the property or any legal entity (corporation, company, partnership, limited partnership, trust, etc.) that has an ownership interest in the property or that has contracted to purchase the property. Disclosure with respect to a beneficial ownership interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, whose interest is for sale to the general public, is exempt from the provision of this subsection.

~~b. Applicant's statement.~~ Notwithstanding the requirements of section 34-201(a)(1)a., the applicant for any action requiring a public hearing must sign a statement, under oath, that he is the owner or the authorized representative of the owner of the property and that he has full authority to secure the approval requested and to impose covenants and restrictions on the referenced property as a result of the action approved by the County in accordance with this Code. This must also include a statement that the property owner will not transfer, convey, sell or subdivide the subject parcel unencumbered by the covenants and restrictions imposed by the approved action.

~~c. Agent authorization.~~ The applicant may authorize agents to assist in the preparation and presentation of the application. The County will presume that any agent authorized by the applicant has the authority to bind the property with respect to conditions.

~~(2) Reserved.~~

~~(3) Reserved.~~

~~(4) Reserved.~~

~~(5) Bonus density.~~ When applicable, the number of bonus density units requested, the resulting gross residential density of the proposal, and documentation substantiating compliance with each of the review criteria set forth in section 2-146.

~~(6) Information regarding proposed blasting.~~ If blasting is proposed to excavate lakes or other site elements, the applicant must provide information and data with the application showing the location of the proposed blasting and demonstrating what measures will be implemented to ameliorate the potential negative impacts. This information must include soil borings that demonstrate the necessity for blasting, drawings showing the location of proposed blasting, and other information deemed necessary by the Director to allow full and complete analysis of compatibility issues associated with the proposed blasting activity.

~~(7) Existing agricultural use affidavit.~~ If the property is located in an agricultural zoning district at the time the request is filed, the application must include an agricultural use affidavit. The affidavit must identify the subject property with specificity and indicate whether or not a bona fide agricultural use existed at the time the application was filed.

If the property owner intends to continue an existing agricultural use subsequent to the zoning approval, an affidavit signed by the property owner and sworn before a notary must be submitted. The property owner affidavit must consist of: (1) a statement as to the specific type and location of the agricultural uses existing on the property at the time of the application; and, (2) a map or sketch of the property, preferably

~~in metes and bounds, identifying with specificity the location and type of ongoing agricultural use as stated in the affidavit. The exhibit should be entitled "Agricultural Uses at time of Zoning Application."~~

- ~~(8) Potable water and sanitary sewer connection. A letter from the appropriate utility entity indicating the utility entity's name and ability to provide service to support the proposed development. If the project does not propose to connect to the potable water and central sewer system, a written explanation as to the reasons why connection will not be made must be submitted along with an explanation as to the means proposed to meet the water and sewer needs for the project.~~

Staff Note – Relocate and reformat existing language for public hearing applications.

Sec. 34-203. Submittal requirements for administrative action applications. ~~Additional requirements for applications requiring public hearing.~~

- (a) Submittal requirements for all administrative action applications. Every request for an administrative action under this chapter must include the following.

(1) Application form. Applications will only be accepted on official forms provided by the Department.

(2) Ownership interests. An affidavit, signed by the property owner or contract purchaser, must be submitted stating whether a Lee County Employee, County Commissioner, or Hearing Examiner has an ownership interest in the property or any legal entity (corporation, company, partnership, limited partnership, trust, etc.) that has an ownership interest in the property or that has contracted to purchase the property. Disclosure with respect to a beneficial ownership interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, whose interest is for sale to the general public, is exempt from this provision.

(3) Applicant's statement. Notwithstanding the requirements of section 34-201(a)(1)a., the applicant must sign a statement, under oath, that he is the owner or the authorized representative of the owner of the property and that he has full authority to secure the approval requested and to impose covenants and restrictions on the referenced property as a result of the action approved by the County in accordance with this Code. This must also include a statement that the property owner will not transfer, convey, sell or subdivide the subject parcel unencumbered by the covenants and restrictions imposed by the approved action.

(4) Agent authorization. The applicant may authorize agents to assist in the preparation and presentation of the application. The County will presume that any agent authorized by the applicant has the authority to bind the property with respect to conditions.

(5) STRAP (Section, Township, Range, Area, Parcel) number for the subject property. This number is used by the Property Appraiser to identify the subject property. If the subject property includes a portion of property within one STRAP, than in addition to the STRAP number, a metes and bounds legal description must also be submitted as follows:

A metes and bounds legal description along with a sketch of the legal description, prepared by a Florida Licensed Surveyor and Mapper, must be submitted, unless the property consists of one or more undivided lots within a subdivision platted in accordance with F.S. ch. 177. If the subject property is one contiguous parcel, the legal description must specifically describe the entire continuous perimeter boundary of the property subject to the zoning action with accurate bearings and distances for every line. If the application seeks to rezone undivided, platted lots, then a complete legal description (i.e., lot, block, subdivision name, public records recording information) of the platted subject property is required. The Director has the right to reject any legal description that is not sufficiently detailed so as to locate the property on County maps.

(6) Approval criteria. A written justification, with support documentation as appropriate, to demonstrate the action requested meets the applicable criteria set forth in section 34-174 for granting administrative approval.

(7) Letters of no objection. Letters of no objection from adjacent property owners, including those separated from the subject property by any right-of-way or easement, as required by the Director.

(8) Site Plan. A detailed site plan, drawn to scale, showing:

- a. The subject property and development parameters (such as existing and proposed lot lines, buildings keyed to proposed uses, streets and accessways, off-street parking, water management facilities, buffering and open space);
- b. Public entrances to, and exits from, the building; and
- c. Any additional details deemed necessary by the Director or required as specified in subsection (c) below.

(b) Additional submittal requirements. In addition to the application requirements provided in subsection (b) above, the following submittal requirements apply, as specified.

(1) On-premises consumption of alcoholic beverages:

- a. Type of state liquor license being requested and anticipated hours for the sale and service of alcoholic beverages.
- b. The floor plan of the building or unit and proposed seating arrangement. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the lounge must be shown in addition to the restaurant seating area.
- c. A sworn statement indicating whether any religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building or unit.
- d. For restaurants, a copy of the proposed menu.

(2) Parking reduction:

- a. A list of all the uses the parking supports, the total floor area for each use, the number of parking spaces required, and the number of parking spaces proposed.
- b. The peak parking demands for each use demonstrating that no part of a parking lot intended to satisfy required parking for a use is used to offset the parking requirements for another use unless the peak parking demands occur at different times.
- c. When reduced parking is requested pursuant to 34-2020(c)(6) a parking demand study must be provided.

(3) Administrative Variance: A detailed list of the section number(s) and the specific regulation(s) from which relief is sought, keyed to the site plan.

(4) Community Gardens:

- a. Letter signed by the property owner giving permission for use of property.
- b. Source of water for irrigation purposes.

(5) Commercial Lot Split:

- a. A detailed list of the section number(s) and the specific regulation(s) from which relief is sought, keyed to the site plan.
- b. Pertinent calculations which demonstrate that the overall development complies with applicable zoning and development standards, except where relief is sought.
- c. Demonstrate means of access to each lot within the overall development.
- d. Documents, satisfactory to the County, assuring that all common elements of the overall development will be perpetually maintained through a property owners association. Common elements may include, but are not limited to, streets and accessways, off-street parking, water management facilities, buffering, fences or walls, and open space.

(6) *Wireless Communication Facilities:* Additional information pursuant to section 34-1446.

- ~~(a) *Developments of regional impact.* Developments of regional impact must comply with the information submittal and procedural requirements of F.S. ch. 380. If the development of regional impact requires specific zoning actions (i.e., rezoning), the procedures and requirements of this section and article IV of this chapter must be met. Additionally, even if the development of regional impact does not require specific zoning action, the applicant must submit a traffic impact statement, as described in section 34-373(a)(7), and detailed in section 10-286. Thresholds for developments of regional impact are stated in Florida Administrative Code chapter 28-24.~~
- ~~(b) *Planned developments.* All planned developments, except mine excavation planned developments, must comply with the additional information submittal and procedural requirements set forth in section 34-373.~~
- ~~(c) *Rezoning other than planned developments and developments of regional impact.* A statement explaining the nature of the request, how the property qualifies for the rezoning, and how the request meets the applicable required findings/review criteria set forth in section 34-145(d)(4). This statement may be utilized by the Board of County Commissioners, Hearing Examiner and staff in establishing a factual basis for the granting or denial of the rezoning.~~
- ~~(d) *Rezoning of mobile home parks.* If the proposed rezoning of an existing mobile home park as defined in F.S. § 723.003, would result in the removal or relocation of mobile home owners, then the application must include facts sufficient to allow staff to conclude that adequate mobile home parks or other suitable facilities exist for the relocation of displaced owners. The facts to be provided are intended to meet the requirements of F.S. § 723.083 (1995). Therefore, the statutory definitions will prevail to the extent there is conflict with terms of this Code.

 - ~~(1) Facts to be provided may typically include: STRAP number and street addresses of properties where mobile homes are to be removed from, and relocated to (i.e., the "relocation site"); and any building permit numbers issued for placement of the mobile home on the relocation site.~~
 - ~~(2) If the relocation site is not within the legal description of the subject rezoning, then the property owner of property proposed for relocation must submit an affidavit stating that suitable facilities exist at the relocation site to accommodate the mobile home proposed to be relocated there.~~~~
- ~~(e) *Special exceptions.* Except for special exceptions that are developments of County impact (see section 34-341), all applications for a special exception must, in addition to the requirements of sections 34-202(a) and (b), include the following:

 - ~~(1) A statement explaining the nature of the request, how the property qualifies for the special exception, and how the request meets the applicable required findings set forth in section 34-145(e)(3). This statement may be utilized by the Hearing Examiner and staff in establishing a factual basis for granting or denial of the special exception.~~
 - ~~(2) A traffic impact analysis of projected trip generation for the development and a site plan, drawn to scale, detailing the following:

 - ~~a. The location and current use of all existing structures on the site.~~
 - ~~b. All proposed structures and uses to be developed on the site.~~
 - ~~c. Any existing public streets, easements or land reservations within the site, and the proposed means of vehicular access to and from the site.~~
 - ~~d. Any other reasonable information which may be required by the Director which is commensurate with the intent and purpose of this chapter.~~~~~~

~~(3) — *Solar or wind energy modifications.* If the request is to modify property development regulations for the purposes of using solar or wind energy, evidence must be submitted that the proposed modifications are the minimum necessary to provide for the solar or wind energy proposal and that the proposed modifications will not adversely affect adjacent properties. (See section 34 2196)~~

~~(4) — *Reserved.*~~

~~(5) — *On premises consumption of alcoholic beverages.* If the request is for a consumption on premises special exception, the application must include the following:~~

~~a. — The property owners list and map (see section 34 202(a)(6) and (7)) must be modified to include all property within 500 feet of the perimeter of the subject property.~~

~~b. — Additional material is required as set forth in section 34 1264(c)(1) and (2).~~

~~c. — A traffic impact analysis of projected trip generation for the development is not required for special exceptions for consumption on premises.~~

~~(6) — *Harvesting of cypress (Taxodium spp.).* An application for a special exception to harvest cypress must include:~~

~~a. — An aerial photograph with vegetation associations mapped as listed in the Florida Land Use, Cover, and Forms Classification System (FLUCCS).~~

~~b. — A forest management plan for the proposed harvesting site.~~

~~c. — Steps which will be taken to ensure that the proposed activity will not have an adverse affect on the environmental sensitivity of the area.~~

~~(7) — *Private aircraft landing facilities.* Applications for private aircraft landing facilities must:~~

~~a. — Indicate the type of facility, as set forth in Florida Administrative Code chapter 14 60.~~

~~b. — Indicate on the site plan the proposed location and length of the effective landing length, as well as the area included in the approach zone.~~

~~c. — Submit a certified list of all airports and municipalities within 15 miles of the proposed site and all property owners within 1,000 feet of the property or within the minimum required approach zone, whichever is greater.~~

~~The Department of Community Development will forward a copy of the application to the Department of Airports for comment prior to any public hearings. No proposed airport will be granted a special exception if the Department of Airports finds that the proposed site would interfere with any other lawfully existing aircraft landing facility, airport or heliport.~~

~~All property owners listed in subsection (c)(7)c. of this section will be sent written notice by certified mail, return receipt requested, of the date, time and place of any public hearing. The applicant will bear the cost of the notification.~~

~~(8) — *Wireless communication facilities.* (Refer to section 34 1441 et seq.)~~

~~(f) — *Variances.* Every application for a variance from the terms of this chapter must, in addition to the requirements of section 34 202(a) and (b), include the following:~~

~~(1) — A statement that includes the section number and particular regulation from which a variance is requested, how the property qualifies for the variance, and how the request meets the applicable required findings set forth in section 34 145(b)(3).~~

~~(2) — A site plan, drawn to scale, detailing:~~

~~a. — Existing public streets, easements or other reservations of land within the site;~~

~~b. — All existing and proposed structures on the site; and~~

~~c. — The location of the proposed variance.~~

~~(3) — Any other reasonable information which may be required by the Department which is commensurate with the intent and purpose of this Code.~~

~~(4) — *Street setbacks on collector and arterial roads.* In the case of a variance from required street setbacks on collector and arterial roads, the applicant:~~

~~1. — May modify the property owners list and property owners map (see section 34 202(a)(6) and (7)) to show only the names and locations of property owners that abut the perimeter of the subject property.~~

~~2. — Must submit a site plan, drawn to scale, showing:~~

~~i. — The location of all proposed structures, easements, rights of way and vehicular access onto the property, including entrance gates or gatehouses; and~~

~~ii. — The extent of modification from street setbacks requested.~~

~~iii. — Any other reasonable information which may be required by the Department which is commensurate with the intent and purpose of this Code.~~

- ~~(5) *Wireless communication facilities.* In the case of variances concerning wireless communication facilities, refer to section 34-1453.~~
- ~~(g) *Use variance.* Use variances are not legally permissible, and no application for a use variance will be processed. Department staff will notify the applicant when a more appropriate procedure, e.g., rezoning or special exception, is required.~~
- ~~(h) *Modifications to submittal requirements.* Upon written request, on a form prepared by the County, the Director may modify the submittal requirements contained in this section, and for those specifically eligible for waiver in section 34-373, where it can be clearly demonstrated by the applicant that the submission will have no bearing on the review and processing of the application. The request and the Director's written response must accompany the application submitted and will become a part of the permanent file. The decision of the Director is discretionary and may not be appealed.~~

Sec. 34-204. Submittal requirements for administrative action applications.

- ~~(a) *All applications.* Every request for administrative actions not requiring a public hearing under this chapter must include the following. Upon written request, on a form prepared by the County, the Director may modify the submittal requirements as set forth in section 34-203(h).~~
 - ~~(1) *The STRAP (Section, Township, Range, Area, Parcel) number for the subject property.* This number is used by the Property Appraiser to identify the subject property.
If the subject property includes a portion of property within one STRAP, then in addition to the STRAP number, a metes and bounds legal description must also be submitted as follows:
A metes and bounds legal description along with a sketch of the legal description, prepared by a Florida Licensed Surveyor and Mapper, must be submitted, unless the property consists of one or more undivided lots within a subdivision platted in accordance with F.S. ch. 177. If the subject property is one contiguous parcel, the legal description must specifically describe the entire continuous perimeter boundary of the property subject to the zoning action with accurate bearings and distances for every line. If the application seeks to rezone undivided, platted lots, then a complete legal description (i.e., lot, block, subdivision name, public records recording information) of the platted subject property is required. The Director has the right to reject any legal description that is not sufficiently detailed so as to locate the property on County maps.~~
 - ~~(2) *Reserved.*~~
 - ~~(3) *Reserved.*~~
 - ~~(4) *Reserved.*~~
 - ~~(5) *Additional material.* Depending on the specific type of action requested, additional material may be required as set forth in section 34-203.~~
 - ~~(6) *Compliance with specific planning community requirements.* If the subject property is located in a planning community, the owner/applicant will be required to demonstrate compliance with the requirements applicable to the specific community in chapter 33.~~
 - ~~(7) *On premises consumption of alcoholic beverages.* If the request is for a consumption on premises permit, additional material is required as set forth in section 34-1264(c)(1).~~
 - ~~(8) *Filing fee.* All fees, in accordance with the duly adopted fee schedule (see section 34-53), must be paid at the time the application is submitted.~~
 - ~~(9) *Parking reduction.* If the request is for a parking reduction, additional material is required as set forth in section 34-2020(e).~~

Staff Note - Secs. 34-202, 34-203 and 34-204 combined and revised as needed for clarity.

Sec. 34-205. - Development of regional impact essentially built-out determination.

Section remains unchanged.

Sec. 34-206. – Family day care home exemption request.

The operation of a family day care home exempt under F.S. § 125.0109 does not require a special exception. Evidence of an exemption for a family day care home must include:

- (a) A sworn statement establishing that the family day care home will operate:
 - (1) In the applicant's residence; and
 - (2) On property owned by the applicant; or

- (3) ~~On property covered by a lease to the applicant for residential purposes, including the right to operate a family day care home.~~
- (b) ~~A copy of the applicant's state family day care home license or registration issued in accordance with F.S. § 402.313.~~
- (c) ~~A special processing fee in accordance with the External Fees and Charges Manual in lieu of the application fee for a special exception.~~
- (d) ~~A plan demonstrating required parking in compliance with section 34-2020(b).~~

Staff Note – Redundant with State Statute. Added note to use tables as needed.

Sec. 34-207. – Excavations.

- (a) ~~Grading or excavation activities intended primarily to provide for the retention or detention of stormwater runoff must obtain a development order in compliance with procedures set forth in chapter 10.~~
- (b) ~~Regulations. Commercial mining excavations must comply with the requirements and procedures set forth in chapter 12.~~

Staff Note - Redundant with chapters 10 and 12.

Sec. 34-208. – Reserved.

Sec. 34-209. – Building relocation permit.

- (a) ~~Compliance with applicable regulations; time limit for leaving buildings on street.~~
 - (1) ~~When a building is moved to any location within the unincorporated area of the County, the building or part thereof shall immediately be made to conform to all the provisions of the latest adopted zoning ordinance and other applicable County regulations.~~
 - (2) ~~Any building being moved for which a permit was granted may not remain in or on the streets for more than 48 hours.~~
- (b) ~~Contents of application. Any person desiring to relocate or move a building must first file with the Director of the Division of Codes and Building Services a written application on an official form provided by the Division. The application must include the following information furnished by the applicant and must be accompanied by the required application fee:~~
 - (1) ~~The present use of the building.~~
 - (2) ~~The proposed use of the building.~~
 - (3) ~~The building's present location and proposed new location by STRAP number, as well as by street numbers.~~
 - (4) ~~Certified survey of the proposed site with ground elevations, flood zone and required elevation, if in a V or A flood zone area.~~
 - (5) ~~Plot plan showing lot dimensions, setbacks, location of existing structures and location of building drawn to scale no more than 1/2 inch equals one inch and no less than one inch equals 50 feet. The plot plan should depict the roof overhang as well as the foundation.~~
 - (6) ~~Construction details, drawn to a scale of no larger than one half inch equals one foot and no smaller than one eighth inch equals one foot, including the following:~~
 - a. ~~Foundation layout with connection details.~~
 - b. ~~Floor plan, existing and proposed.~~
 - c. ~~Mechanical plans, including air conditioning, electric system and plumbing plans.~~
 - d. ~~Elevations, front, side and rear.~~
 - e. ~~Flood elevation, if applicable.~~
 - (7) ~~Current termite inspection by licensed pest controller.~~
 - (8) ~~Water and sewer approvals from appropriate agencies.~~
 - (9) ~~Photographs showing all sides of the building and the site where the building is proposed to be located.~~
 - (10) ~~Proof of notice to all owners of property abutting or across the street from the site where the building is proposed to be located.~~
- (c) ~~Inspection of building. The Director of the Division of Codes and Building Services will have the building inspected to determine:~~
 - (1) ~~If the building can be brought into compliance in all respects with this chapter and other County regulations pertaining to the area to which the building is to be moved.~~

- (2) ~~If the building is structurally sound and either complies with the Standard Building Code and other codes adopted by the County or can be brought into compliance with such codes.~~
- (d) ~~Rejection of application.~~ The Director of the Division of Codes and Building Services must reject any application if:
 - (1) ~~The building fails to meet the inspection criteria detailed in subsection (c) of this section;~~
 - (2) ~~In the opinion of the Director, the moving of any building will cause serious injury to persons or property;~~
 - (3) ~~The building to be moved has deteriorated due to fire or other element to more than 50 percent of its assessed value; or~~
 - (4) ~~The moving of the building will violate any of the requirements of the Standard Building Code, this chapter or other applicable County regulations. Such decisions are administrative decisions which may be appealed in accordance with section 34-145(a).~~
- (e) ~~Approval of application.~~
 - (1) ~~Upon approval of the application for building relocation, a licensed building relocation contractor representing the applicant must:~~
 - a. ~~Apply for and receive all required permits from the Department of Transportation, County or state;~~
 - b. ~~Pay the required fees and obtain the building relocation permit and appropriate sub-permits.~~

Staff Note - Relocated to chapter 6.

Sec. 34-210. Temporary use permits.

- (a) ~~Applicability.~~ The County, or any person desiring to conduct any of the uses described in article VII, division 37, subdivision II, of this chapter shall be required to submit an application for a temporary use permit.
- (b) ~~Initiation of application.~~ An application for a temporary use permit may be initiated by the County or any individual authorized in accordance with section 34-201(a).
- (c) ~~Submission of application.~~
 - (1) ~~No application shall be accepted unless it is presented on the official forms provided by the Department.~~
 - (2) ~~Before an application may be accepted, it must fully comply with all information requirements enumerated in the application form as well as the requirements set forth in subsection (d) of this section.~~
 - (3) ~~The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of any inaccurate or incomplete information submitted shall be borne by the applicant.~~
- (d) ~~Additional required information.~~ In addition to the application information, the applicant shall submit satisfactory evidence of the following:
 - (1) ~~Evidence shall be submitted that adequate sanitary facilities meeting the approval of the County Health Department are provided.~~
 - (2) ~~Evidence shall be submitted that sounds emanating from the temporary use shall not adversely affect any surrounding property.~~
 - (3) ~~Evidence shall be submitted that all requirements as to providing sufficient parking and loading space are assured.~~
 - (4) ~~When deemed necessary, a bond shall be posted, in addition to an agreement with a responsible person sufficient to guarantee that the ground area used during the conduct of the activity is restored to a condition acceptable to the Department.~~
 - (5) ~~All applications for temporary permits, excluding those for mobile homes during construction of a residence, shall provide public liability and property damage insurance. This requirement may be waived by the Board of County Commissioners at a regular meeting, after advertisement on the agenda.~~
 - (6) ~~Evidence shall be submitted that, where applicable, the applicant for a proposed use has complied with Ordinance No. 14-15 of the County, pertaining to special events.~~
 - (7) ~~Evidence shall be submitted that the law enforcement and fire agencies who will be coordinating traffic control or emergency services have been advised of the plans for a temporary use and that they are satisfied with all aspects under their jurisdiction.~~
- (e) ~~Inspection following expiration of permit; refund of bonds.~~ Upon expiration of the temporary permit, the Department shall inspect the premises to ensure that the grounds have been cleared of all signs and debris resulting from the temporary use and shall inspect the public right of way for damages caused by the temporary use. Within 45 days after a satisfactory inspection report is filed, the Department shall process a

~~refund of the bonds. An unsatisfactory inspection report shall be sufficient grounds for the County to retain all or part of the bonds posted to cover the costs which the County would incur for cleanup or repairs.~~

Staff Note - Relocated to section 34-3041.

Sec. 34-2041. - Denials and resubmission of applications.

(a) and (b) remain unchanged.

Secs. 34-205212—34-230300. - Reserved.

~~Secs. 34-261—34-264. - Reserved.~~

~~Sec. 34-265. - Compliance.~~

~~Failure to comply, or remain in compliance, with the provisions of this Code and conditions of approval under this chapter constitutes a violation of this Code.~~

~~Sec. 34-266. - Cease and desist orders.~~

~~The Director has the authority to issue cease and desist orders in the form of written official notices.~~

Staff Note - Relocated to 34-172.

~~Sec. 34-267. - Authority to permit uses pending a zoning action.~~

- ~~(a) The Director is authorized to permit proposed uses that are not permitted on a subject parcel for a period of not more than 180 days under the following circumstances:~~
- ~~(1) The property owner, contract purchaser or other authorized person has filed an application for a rezoning or a special exception for the subject parcel that would, if approved, make the requested use a permitted use;~~
 - ~~(2) The requested rezoning or special exception, in the opinion of the Director, is clearly compatible with the neighboring uses and zoning and is consistent with the Lee Plan;~~
 - ~~(3) The proposed use of the property is a business that is being relocated due to the County's economic development efforts or as the result of threatened or ongoing condemnation proceedings;~~
 - ~~(4) No new principal structures are to be constructed on the subject property; and~~
 - ~~(5) The applicant agrees in writing that the proposed use will cease within 180 days of the date of the administrative approval unless the Board of County Commissioners or Hearing Examiner, whichever is applicable, has rendered a final decision approving the requested rezoning or special exception. Upon execution, the agreement must be recorded in the public records of the County.~~
- ~~(b) Decisions by the Director pursuant to this section are discretionary and may not be appealed pursuant to subsection 34-145(a).~~
- ~~(c) The Director may extend the effective date of the approval up to an additional 90 days upon good cause shown.~~
- ~~(d) No approval issued pursuant to this section will excuse any property owner from compliance with any County regulation except the list of permitted uses in the zoning district in question.~~

Staff Note - Relocated to 34-173.

~~Sec. 34-268. - Administrative variances.~~

- ~~(a) The Director is authorized to administratively approve variances of the following:~~
- ~~(1) Street, rear, side, or waterbody setbacks to allow:~~
 - ~~a. Remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:
 - ~~i. An increase in the height of the structure; or~~
 - ~~ii. A further diminution of the setback. The Director may approve bay windows, chimneys and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.~~~~
 - ~~b. Construction of access appurtenant to an existing structure for disabled persons.~~
 - ~~c. Replacement of stairs or decking that provides access into an existing dwelling unit.~~
 - ~~d. Minor errors that occurred at the time of construction to be legitimized.~~
 - ~~e. Construction of a single family dwelling unit so long as the proposed lot coverage does not exceed 45 percent for lots that qualify for a single family determination, pursuant to the Lee Plan.~~
 - ~~f. Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted.~~

- ~~(2) Relief authorized for development of property that is subject to a Lee County initiated eminent domain proceeding pursuant to section 1-16.~~
 - ~~(3) Setbacks in conventional zoning districts, not covered by section 34-268(a)(1), where the encroachment is:

 - ~~a. 10% or less of the minimum required setback for proposed buildings; or~~
 - ~~b. 20% or less of the minimum required setback for existing buildings.~~~~
 - ~~(4) Chapter 34 requirements that are necessary to facilitate development of existing nonconforming buildings or structures that have lost their nonconforming status pursuant to section 34-3242(2). Chapter 30 requirements for signs that have lost their nonconforming status pursuant to section 30-55(b)(2). Administrative variances granted pursuant to this section may only be granted to the extent that the variance is the minimum that will bring the site more into compliance with this Code given the existing site constraints. Nonconforming open space, buffering and landscaping are subject to the regulations of section 10-416 and, as required, must be brought into conformance to the maximum extent possible.~~
 - ~~(5) Landscaping required by section 34-1743(b)(3) to allow existing, required or optional nonconforming residential project walls to be repaired or replaced.~~
 - ~~(6) Property development regulations for all religious facilities and places of worship provided in section 34-2051(a) for properties zoned residential and located in a platted subdivision.~~
 - ~~(7) Requirements not listed above that are found by the Director to be similar in nature.~~
 - ~~(b) Before approving any administrative variance, the Director must find that all of the following exist:

 - ~~(1) There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question;~~
 - ~~(2) The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to the property; and~~
 - ~~(3) The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.~~~~
 - ~~(c) Applicants seeking an administrative variance must submit the following:

 - ~~(1) A written request on a form prepared by the County which includes the submittal requirements set forth in section 34-204 and, as applicable, sections 34-202 and 34-203. The applicant must demonstrate that the variance request meets the criteria for granting an administrative variance set forth in section 34-268(b).~~
 - ~~(2) A detailed site plan of the overall development which indicates existing and proposed lot lines, buildings and uses, streets and accessways, off street parking, water management facilities, buffering and open space.~~
 - ~~(3) A detailed listing of the section number(s) and the specific regulation(s) of chapter 34, chapter 10 and/or chapter 30, if applicable, from which relief is sought. This information must also be shown on the site plan.~~
 - ~~(4) Pertinent calculations which demonstrate that the overall development complies with zoning and development standards.~~
 - ~~(5) Letters of no objection from all adjacent property owners, including those which may be separated from the subject property by any right of way or easement, or as required by the Director.~~~~
 - ~~(d) Upon completion of the review of documents submitted, the Director may approve the request with or without conditions to ensure that the overall development complies with the development standards.~~
 - ~~(e) Decisions by the Director pursuant to this section are discretionary and may not be appealed in accordance with section 34-145(a) of this chapter. If a request for an administrative deviation is denied, or the applicant disapproves of the conditions imposed, the applicant may seek a variance through the normal public hearing process provided under section 34-145.~~
- ~~Sees. 34-269 - 34-300. - Reserved.~~

Staff Note - Relocated to 34-174.

ARTICLE IV. - PLANNED DEVELOPMENTS

DIVISION 2. - APPLICATION AND PROCEDURE FOR APPROVAL

Sec. 34-371. - Generally.

All applications for planned development zoning or master concept plan approval must follow the requirements detailed in Article II, Division 6 sections 34-201, 34-202 and 34-203 and the requirements set out in this division.

Sec. 34-380. - Amendments to approved master concept plan.

(a) *remains unchanged.*

(b) The Director may administratively approve an amendment to a planned development in accordance with section 34-174. any change to the development that does not increase height, density or intensity (i.e., number of dwelling units or quantity of commercial or industrial floor area) except as permitted in chapter 2. The Director may not approve a change that will:

- (1) ~~Result in the substantial underutilization of public resources and public infrastructure committed to the support of the development;~~
- (2) ~~Result in a reduction of total open space provided on the master concept plan by more than ten percent or that would decrease the amount of indigenous native vegetation or open space required by the Code;~~
- (3) ~~Decrease preservation areas. Changes to buffer or landscaping areas are permitted but must provide equivalent or better (by comparison with the approved Master concept plan) landscaping or buffering; or~~
- (4) ~~Adversely impact surrounding land uses.~~

~~If the County determines that an approved administrative amendment was based on inaccurate or misleading information or if the approval did not comply with this Code when the decision was rendered, then, at any time, the Director may issue a modified approval that complies with the Code or revoke the approved administrative amendment.~~

~~If the approval is revoked, the applicant may acquire the necessary approvals by filing an application for public hearing in accordance with section 34-373 of this chapter. Decisions by the Director pursuant to this section are discretionary and may not be appealed in accordance with section 34-145(a) of this chapter.~~

(c) through (g) *remain unchanged.*

Staff Note – Relocated to 34-174

DIVISION 3. – DESIGN STANDARDS

Sec. 34-411. - General standards.

(a) thru (c) *remain unchanged.*

(d) ~~The tract or parcel shall~~ All planned developments must have access to existing or proposed roads. Access must comply with the requirements of chapter 10 and be located so that site-related industrial traffic does not travel through predominantly residential areas.

- (1) ~~In accordance with chapter 10 and as specified in the Lee Plan transportation element;~~
- (2) ~~That have either sufficient existing capacity or the potential for expanded capacity to accommodate both the traffic generated by the proposed land use and that traffic expected from the background (through traffic plus that generated by surrounding land uses) at a level of service D or better on an annual average basis and level of service E or better during the peak season, except where higher levels of service on specific roads have been established in the Lee Plan; and~~
- (3) ~~That provide ingress and egress without requiring site related industrial traffic to move through predominantly residential areas.~~

Remainder of section unchanged.

Staff Note – Remove outdated concurrency language.

ARTICLE VI. DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 34-621. - Use and development regulations for conventional districts.

- (a) *Applicability.* No land, body of water or structure ~~shall~~ may be used or permitted to be used and no structure ~~shall~~ may hereafter be erected, constructed, moved, altered or maintained ~~in any conventional zoning district~~ for any purpose other than as provided in the use regulation tables and in accordance with the property development regulations tables set forth in this article for the zoning district in which the property is located, except as may be specifically provided for elsewhere in this chapter. ~~for in article VIII of this chapter, pertaining to nonconforming uses, or in section 34-620.~~
- (1) All uses of land, water and structures ~~in the conventional zoning districts~~ are subject to the ~~County Comprehensive Plan (the Lee Plan) and the County Future Land Use Plan Map,~~ and therefore may not be permitted in all land use categories.
- (2) All uses of land, water and structures in the conventional zoning districts are subject to the specific use and property development regulations set forth for the district in which located, as well as all general provisions and all applicable supplemental regulations set forth in this chapter. ~~Except as may be specifically provided for elsewhere in this chapter,~~ deviations from the property development regulations may only be granted in accordance with the procedures established in sections 34-203(e) and (f) and 34-145(b) for variances.
- (b) remains unchanged.
- (c) *Property development regulations.* Divisions 2 through 9 of this article contain property development regulations tables which set forth the minimum development lot size and dimensions, setbacks, lot coverage, maximum building height and similar regulations for development of land within the specified districts.

Sec. 34-625. - Outdoor lighting standards.

- (a) thru (f) remain unchanged.
- ~~(g) Existing outdoor lighting.~~ All applications for development orders or building permits, except for single family and duplex building permits, for properties with existing outdoor light fixtures must demonstrate compliance with the outdoor lighting standards of this Code. Compliance with light pole height requirements is not required for light poles existing on June 24, 2003. Replacement of fixtures not in conjunction with a development order or building permit, as applicable, requires a Type A limited development order approval issued by Development Services that demonstrates compliance with the outdoor lighting standards for fixtures established herein.

Staff Note – Removed language duplicative of nonconforming regulations.

DIVISION 2. - AGRICULTURAL DISTRICTS

Sec. 34-653. - Use regulation table.

Use regulations for agricultural districts are as follows:

TABLE 34-653. USE REGULATIONS FOR AGRICULTURAL DISTRICTS

	Special Notes or Regulations	AG-1	AG-2	AG-3
Accessory apartments <u>and accessory dwelling unit</u>	34-1177 4 and 34-1180	P	P	P
Day care center, adult or child	34-206, Notes (13), (15) & (16)	EO/SE	EO/SE	EO/SE
Forestry, cypress (<i>Taxodium</i> spp.), for sawtimber use	34-651 et seq.	SE	SE	SE

only				
Recreation facilities:				
Commercial - Group III	34-622(c)(38), Note (10)	SE	SE	SE
Personal	Note (28)	P	P	P
Private-Onsite		P	P	P
Private-Offsite		EO/SE	EO/SE	EO/SE

Notes:

- ~~note;~~ (1) Any expansion which will bring the number of beds to 50 or more requires a special exception.
- ~~note;~~ (2) Any lot created in the rural community preserve land use category (as delineated by policy 17.1.3 of the Lee Plan) after July 9, 1991, must have a minimum area of 43,560 square feet excluding all street rights-of-way or easement areas, water management areas, and natural water bodies. Public utility easement areas may be included in the lot size calculation.
- ~~note;~~ (3) Limited to uses and buildings customarily incidental to agricultural uses, including the processing and packaging of agricultural products primarily grown on the premises.
- ~~note;~~ (4) Mobile home permitted provided it is the only residential unit on the property, and provided further that the property meets the same lot area and dimensions, setbacks, height and maximum lot coverage as set forth in table 34-654 for the AG-1 district.
- ~~note;~~ (5) Only permitted in compliance with section 34-1180.
- ~~note;~~ (6) Expansion of facility to ten or more acres requires a special exception.
- ~~note;~~ (7) Any new facility of ten or more acres or any expansion of an existing facility to ten or more acres requires a special exception.
- ~~note;~~ (8) Any new facility of 50 or more beds, or any expansion of an existing facility which will bring the number of beds to 50 or more or which changes the use, requires a special exception.
- ~~note;~~ (9) Recreational halls require a special exception approval.
- ~~note;~~ (10) Limited to passive and active recreational and educational activities including, but not limited to, hiking and nature trails, paintball and gun ranges, zip lining, paragliding, and similar activities where little or no on site facilities or capital investment are required, and the natural environment, with little or no alteration of the nature landscape, is utilized.
- ~~note;~~ (11) Not permitted in Coastal High Hazard areas unless in compliance with section 2-485(b)(5)a.
- ~~note;~~ (12) The keeping of ostrich, cassowary, rhea, or emu for the production of meat, skins, or hides, feathers, or the progeny thereof, as part of a bonafide agricultural operation does not require a special exception.
- ~~note;~~ (13) Family day care homes are exempt pursuant to F.S. § 125.0109. ~~Reserved.~~
- ~~note;~~ (14) Non-commercial only.
- ~~note;~~ (15) A day care center, owned by the entity with title to the place of worship, that is operated within the building housing the place of worship is not required to obtain special exception approval.
- ~~note;~~ (16) Not permitted in Airport Noise Zone B.
- ~~note;~~ (17) Not permitted in Airport Noise Zone B. See section 34-1004 for exceptions.

- ~~note;~~ (18) Only when accessory to an agritourism activity permitted in accordance with ~~LDC~~ § section 34-1711.
- ~~note;~~ (19) Not permitted in Airport Noise Zone B unless accessory to a lawful mobile home or single-family residence. See section 34-1004.
- ~~note;~~ (20) Not permitted in Airport Noise Zone B. Housing units consisting of mobile homes or park trailers are also not permitted in Airport Noise Zone B.
- ~~note;~~ (21) Not permitted in Airport Noise Zone B unless pre-empted by state law.
- ~~note;~~ (22) Not permitted in Airport Noise Zones B unless required to support a noise compatible use and constructed in compliance with limitations for dwelling unit type set forth in section 34-1004 as applicable.
- ~~note;~~ (23) Minimum of five acres required.
- ~~note;~~ (24) The rights applicable to mining excavations approved prior to September 1, 2008, are set forth in section 12-121.
- ~~note;~~ (25) Only in conjunction with a bona fide agricultural use.
- ~~note;~~ (26) Minimum property size for a picnic pavilion is 10 acres. Structure is limited to 1,000 square feet with less than 100 square feet for an enclosed bathroom.

Sec. 34-694. - Use regulations table.

Use regulations for one- and two-family residential districts are as follows:

TABLE 34-694. USE REGULATIONS FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS

		Special Notes or Regulations	RSC-1	RSC-2	RSA	RS-1	RS-2	RS-3	RS-4	RS-5	TFC-1	TFC-2	TF-1
		<u>Notes (1) & (10), 34-1177</u>	—	—	<u>P</u> <u>AA</u>	<u>P</u> <u>AA</u>	<u>P</u> <u>AA</u>	<u>P</u> <u>AA</u>	<u>P</u> <u>AA</u>	<u>P</u> <u>AA</u>	P	P	—
		34-1171 et seq., 34-2441 et seq. 34-3106	P	P	P	P	P	P	P	P	P	P	P
	Residential accessory uses	Note (13), 34-622(c)(42), 34-1171 et. seq., 34-1863, 34-1741 et seq., 34-2141 et seq.	P	P(4)	P	P	P	P	P	P	P	P	P
	Day care center, adult or child	34-206, Notes <u>(5), (9) & (10)</u>	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
	Essential service facilities (34-622(c)(13)):												

	Group I	34-1611 et seq., 34-1741 et seq., 34-2142	P	P	P	P	P	P	P	P	P	P	P
	Group II	34-1611 et seq., 34- 1741 et seq., 34- 2141 et seq.	—	—	—	EO	—	—	—	—	—	EO	—

Notes:

(1) through (4) remain unchanged.

(5) Family day care homes are exempt pursuant to F.S. § 125.0109. ~~Reserved.~~

(6) through (15) remain unchanged.

Staff Note - Site plan for accessory apartments is reviewed at time of building permit. No review criteria specific for administrative approval.

Sec. 34-714. - Use regulations table.

Use regulations for multiple-family districts are as follows:

TABLE 34-714. USE REGULATIONS FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS

		Special Notes or Regulations	RM-2 (Note 5)	RM-3, RM-6, RM-8, RM- 10 (Note 5)
<u>Accessory apartment and accessory dwelling unit</u>		<u>Notes (1) & (10), 34-1177</u>	<u>P</u>	<u>P</u>
Day care center:				
	Adult	Note (10)	SE	SE
	Child	34-206 , Notes <u>(6)</u> , <u>(9)</u> & (10)	SE	SE

Notes:

(1) through (5) remain unchanged.

(6) Family day care homes are exempt pursuant to F.S. § 125.0109. ~~Reserved.~~

(7) through (16) remain unchanged.

Staff Note – Add note for family day care home.

Sec. 34-735. - Use regulations table.

Use regulations for mobile home districts are as follows:

TABLE 34-735. USE REGULATIONS FOR MOBILE HOME DISTRICTS

		Special Notes or Regulations	MHC-1, MHC-2	MH-1	MH-2	MH-3	MH-4
Day care center, adult or child:							
	Adult	Note (7)	SE	SE	SE	SE	SE
	Child	34-206, Notes <u>(4)</u> , (7) & (8)	SE	SE	SE	SE	SE

Notes:

- (1) through (3) remain unchanged.
- (4) Family day care homes are exempt pursuant to F.S. § 125.0109. ~~Reserved.~~
- (5) through (13) remain unchanged.

Staff Note – Add note for family day care home.

Sec. 34-767. - Use regulations table.

Use regulations for recreational vehicle districts are as follows:

TABLE 34-767. USE REGULATIONS FOR RECREATIONAL VEHICLE DISTRICTS

		Special Notes or Regulations	RV-2	RV-3
Day care center, adult or child:				
	Adult	Note (5)	EO/SE	EO/SE
	Child	34-206, Notes <u>(4)</u> , & (5) & <u>(6)</u>	EO/SE	EO/SE

Notes:

- (1) through (5) remain unchanged.
- (6) Family day care homes are exempt pursuant to F.S. § 125.0109.

Staff Note – Add note for family day care home.

Sec. 34-813. - Use regulations table.

Use regulations for the community facilities districts are as follows:

TABLE 34-813. USE REGULATIONS FOR COMMUNITY FACILITIES DISTRICTS

		Special Notes or Regulations	CF
Day care center:			
	Adult	Note (7)	P

	Child	34-206 , Notes <u>(4)</u> , (6) & (7)	SE
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Notes:

- (1) through (3) remain unchanged.
- (4) Family day care homes are exempt pursuant to F.S. § 125.0109. ~~Reserved.~~
- (5) through (12) remain unchanged.

Staff Note – Add note for family day care home.

Sec. 34-844. - Use regulations table.

Use regulations for conventional commercial districts are as follows:

TABLE 34-844. USE REGULATIONS FOR CONVENTIONAL COMMERCIAL DISTRICTS

	Special Notes or Regulations	C-1A	C-1	C-2	C-2A	CN-1	CN-2	CN-3 (21, 23)	CC	CG	CS-1	CS-2	CH	CT	CR	CI	CP
Accessory apartment and accessory dwelling unit	Notes (1) & (25), 34-1177	P	P	P	<u>P</u>	—	—	—	—	—	—	<u>P</u>	—	—	—	—	—
Day care center, adult, child	34-206 , Notes <u>(25) & (36)</u>	P	P	P	P	P	P	P	P	P	—	—	—	P	P	—	—

Notes:

- (1) through (35) remain unchanged.
- (36) Family day care homes are exempt pursuant to F.S. § 125.0109.

Staff Note – Add accessory apartment/dwelling unit as permitted in C-2A and CS-2 to allow in all districts where single-family residences are permitted use; add note for family day care home.

Sec. 34-903. - Use regulations table.

Use regulations for industrial districts are as follows:

TABLE 34-903. USE REGULATIONS FOR INDUSTRIAL DISTRICTS

	Special Notes or Regulations	IL Note (14)	IG Note (14)	IR Note (14)
Day care center, child	34-206 , Notes <u>(10)</u> , (13) & (16)	P	—	—
Day care center, adult	34-206 , Notes <u>(10)</u> , (13) & (16)	P	—	—

Notes:

(1) through (9) remain unchanged.

(10) Family day care homes are exempt pursuant to F.S. § 125.0109. Reserved.

(11) through (17) remain unchanged.

Staff Note – Add note for family day care home.

Sec. 34-934. - Use regulations table.

Use regulations for planned development districts are as follows:

TABLE 34-934. USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS

	Special Notes or Regulations	RPD	MHPD	RVPD	CFPD	CPD	IPD Note (37)	AOPD	MPD	MEPD
Accessory apartment <u>and</u> <u>accessory dwelling unit</u>	Note (2), (21), & (28), 34-1177	P	—	—	—	—	—	—	P	—
Day care center, child, adult	Notes <u>(13) & (28)</u>	P(4)	P(4)	P(8)	P	P	P	P	P	—

Notes:

(1) through (12) remain unchanged.

(13) Family day care homes are exempt pursuant to F.S. § 125.0109. Reserved.

(14) through (49) remain unchanged.

Staff Note – Add note for family day care home.

ARTICLE VII. - SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 2. - ACCESSORY USES, BUILDINGS AND STRUCTURES

Sec. 34-1177. – Accessory apartments and accessory dwelling units.

(a) Density.

(1) An accessory apartment is not subject to density provisions of the Lee Plan.

(2) An accessory dwelling unit is subject to density provisions of the Lee Plan. Density may be calculated using the maximum total (bonus) density of the property’s future land use category designation. Accessory dwelling units must pay applicable impact fees pursuant to chapter 2.

(3) A maximum of one accessory apartment or one accessory dwelling unit is permitted per principal, single-family residence.

(b) Development standards.

- (1) Off-street parking. In addition to the requirements of section 34-2020(a), one additional space is required. All required parking must be provided on the site.
- (2) Maximum floor area. The maximum floor area for the accessory apartment or accessory dwelling unit is 50 percent of the living area of the principal, single-family residence.
- (3) Maximum lot coverage. The maximum lot coverage permitted for the zoning district in which the property is located may not be exceeded.
- (4) Minimum lot size. The property must be a lawfully existing lot of record that conforms to the minimum lot area, width, and depth of the zoning district in which it is located.
- (5) Appearance. An attached accessory apartment or accessory dwelling unit must be designed to retain the appearance of a single-family residence.
- ~~(a) Occupancy. The principal structure must be owner-occupied and is not limited to family members. Occupancy of the accessory apartment is not limited to family members of the principal structure. The purpose of this section is to facilitate the provision of affordable housing, strengthen the family unit or provide increased opportunities for housing the elderly and persons with special needs.~~
- ~~(b) Applicability. This section sets forth the requirements for accessory apartments, when subordinate to a single-family detached dwelling unit. The requirements of this section apply to accessory apartments whether they are listed as a permitted use or a use by administrative approval.~~
- ~~(c) Definition. For purposes of this section, the term "accessory apartment" means a living unit, with or without cooking facilities, constructed subordinate to a single-family residence that could be made available for rent or lease.~~
- ~~(d) Off-street parking. In addition to the requirements of section 34-2020(a), one additional space is required for the accessory apartment, and all required parking must be provided on the site.~~
- ~~(e) Maximum floor area.~~
- ~~(1) Attached apartments. If the accessory apartment is constructed as part of the principal building, the maximum floor area of the accessory apartment may not exceed 50 percent of the floor area of the main dwelling unit.~~
- ~~(2) Detached apartments. If the accessory apartment is not constructed as part of the main dwelling unit, the maximum floor area is 50 percent of the floor area of the main dwelling unit.~~
- ~~In no event may the maximum lot coverage permitted for the zoning district in which the property is located be exceeded. The accessory apartment is limited to one family, as defined in this chapter.~~
- ~~(f) Minimum lot size. An accessory apartment may be permitted on a lawfully existing lot of record that conforms to the minimum lot size of the district in which it is located. However, in no case may the lot area be less than 6,000 square feet.~~
- ~~(g) Garage conversions.~~
- ~~(1) Attached garages. An attached garage may be converted to an accessory apartment.~~
- ~~(2) Detached garages. A detached garage may be converted to an accessory apartment provided that the garage is not closer to the street right-of-way or easement than the principal dwelling unit. In no instance may the conversion be permitted where the garage encroaches in the front setback.~~
- ~~The minimum number of parking spaces must be maintained after the conversion of an attached or detached garage.~~
- ~~(h) Appearance. The entrance to the accessory apartment, when constructed as part of the principal residence, must be designed to retain the appearance of a single-family residence.~~
- ~~(i) Density.~~
- ~~(1) An accessory apartment, for the purposes of density, is termed a dwelling unit in accordance with the Lee Plan.~~
- ~~(2) For the purposes of density, an accessory apartment is considered an affordable unit, allowing density calculations to be based on the future land-use category bonus density range.~~

Staff Note – Update language to differentiate between accessory apartment and accessory dwelling unit. Remove regulations which are redundant or prohibitive. Remove requirement for administrative approval.

DIVISION 37. - SUBORDINATE AND TEMPORARY USES

Subdivision II. Temporary Uses

Sec. 34-3041. - Temporary use permits, Generally.

(a) Permit required. No temporary use may be established until a temporary use permit has been obtained from the Department. Events that have a duration less than six hours, not occurring more than once a month, and not in conjunction with a alcoholic beverage permit, such as ribbon cuttings, company events or other similar uses, are not required to obtain a temporary use permit.

(1) Application. A complete temporary permit application must be submitted to the County.

(2) Filing fee. All fees, in accordance with the County's External Fees and Charges Manual, must be paid at time of permit issuance.

(b) Location. Temporary uses are subject to the following regulations:

(1) Temporary uses are allowed as permitted in the use regulations tables for conventional zoning districts or as a permitted use in the schedule of uses for planned development zoning districts.

(2) Temporary uses are permitted on vacant lots or in the parking lots or grassed areas of developed properties when the temporary use is ancillary to the principal use. Temporary uses are not permitted in open space or preserve areas as designated on an approved local development order.

(3) The area of the lot where the temporary use will be located must be clearly defined and must not obstruct pedestrian and vehicular movements or interfere with any preserve or water management areas.

(4) Off-street parking with a surface type specified in section 34-2017(b) must be provided. If the temporary use will be on premises with existing parking facilities, no additional parking facilities will be required.

(5) No part of a parking lot used to satisfy required parking for any existing use on the same premises may be used for a temporary use unless it is demonstrated that the hours of operation of the temporary use and parking demands of any permitted existing use occur at different times or as otherwise approved by the Director.

(c) Lighting. No electrical service for temporary or permanent lighting may be installed without additional permit approval.

(d) Time limit.

(1) The maximum duration of a temporary use permit is 30 continuous days, except as provided for in sections 34-3043 through 34-3049.

(2) No more than four (4) permits for similar temporary uses may be issued on the same premises per calendar year. The temporary uses may not run consecutively and must be separated by a minimum of 45 days. Exceptions are provided for in sections 34-1716 and 34-3048.

(e) Hours of operation. Must be confined to those specified in the permit.

- (f) Cleanup. The site must be cleared of all debris at the end of the temporary use and all temporary structures must be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.
- (g) Traffic control. Must be arranged and paid for by the applicant, as required by the Sheriff's Department or the Lee County Department of Transportation.
- (h) Damage to public right-of-way. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required by the County to ensure the repair of any damage resulting to any public right-of-way as a result of the event.

Sec. 34 3041. Generally.

- (a) Purpose. The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.
- (b) Permit required. No temporary use may be established until a temporary use permit has been obtained from the Department (see section 34 210).
- (c) Location. Temporary uses are allowed as permitted in agricultural, commercial and industrial zoning districts subject to the following regulations:
 - (1) Temporary uses are permitted on vacant lots or in the parking lots or grassed areas of developed properties when the temporary use is ancillary to the principal use. Temporary uses are not permitted in open space or preserve areas as designated on an approved local development order.
 - (2) The area of the lot where the temporary use will be located must be clearly defined and must not obstruct pedestrian and vehicular movements or interfere with any preserve or water management areas.
 - (3) Off street parking with a surface type specified in section 34 2017(b) shall be provided. If the temporary use will be on premises with existing parking facilities, no additional parking facilities shall be required.
 - (4) No part of a parking lot used to satisfy required parking for any existing use on the same premises may be used for a temporary use unless it is demonstrated that the hours of operation of the temporary use and parking demands of any permitted existing use occur at different times or as otherwise approved by the Director.
- (d) Lighting. No permanent or temporary lighting may be installed without approval from the building department.
- (e) Time limit.
 - (1) All uses must be confined to the dates specified on the temporary use permit; provided, however, that:
 - a. Except as provided in sections 34 3043 through 34 3049, a temporary use will not be permitted for more than 30 contiguous days; and
 - b. If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.
 - (2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use more than four times in a calendar year or within 45 days from the date of expiration of the previous temporary use permit, except for community gardens as described in section 34 1716 and seasonal farmer's market (section 34 3048).
 - (3) Events that have a duration less than six hours, not occurring more than once a month, and not in conjunction with a alcoholic beverage permit, such as ribbon cuttings, company events or other similar uses, are not required to obtain a temporary use permit.
- (f) Hours of operation. Hours of operation must be confined to those specified in the permit.
- (g) Cleanup. The site must be cleared of all debris at the end of the temporary use and all temporary structures must be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.
- (h) Traffic control. Traffic control as may be required by the County Sheriff's Department and the County Department of transportation must be arranged and paid for by the applicant.
- (i) Damage to public right of way. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required by the County to ensure the repair of any damage resulting to any public right of way as a result of the event.

Staff Note – Update language applicable to all temporary use permits for clarity and to remove redundant language.

DIVISION 5. - ALCOHOLIC BEVERAGES

Sec. 34-1264. - Sale or service for on-premises consumption.

(a) *Approval required.* The sale or service of alcoholic beverages for consumption ~~on the premises~~ on-premises is not permitted until the location has been approved by the County as follows:

(1) *Administrative approval.* ~~An administrative approval for consumption on-premises is required in accordance with 34-174 when in conjunction with the following uses: The Director of the Department of Community Development may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses, if the proposed use satisfies the requirements set forth in this division. When circumstances so warrant the Director may determine administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstances may include the previous denial by the Director or by a hearing board of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the Director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the Director may not approve another request for consumption on the premises within one year's time, which could potentially violate the distance requirements. If the first building is completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the Director may approve the second location subject to all other requirements contained in this division.~~

a. through j. remain unchanged.

(2) – (3) remain unchanged.

(b) remains unchanged.

~~(c) Procedure for approval.~~

~~(1) Administrative approval.~~

~~a. Application. An applicant for a consumption on the premises permit must submit the following information on the form provided by the County:~~

~~1. The name, address and telephone number of the applicant.~~

~~2. The name, address and telephone number of the owner of the premises, if not the applicant.~~

~~3. An authorization from the property owner to apply for the permit.~~

~~4. Location by STRAP and street address.~~

~~5. Type of state liquor license being requested and anticipated hours for the sale and service of alcoholic beverages.~~

~~6. A site plan, drawn to scale, showing:~~

~~i. The property in question, including all buildings on the property and adjacent property;~~

~~ii. Entrances to and exits from the building to be used by the public;~~

~~iii. A parking plan, including entrances and exits;~~

~~iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the lounge must be shown in addition to the restaurant seating area.~~

~~7. A County map marked to indicate all property within 500 feet of the building to be used for consumption on the premises.~~

~~8. A sworn statement indicating that no religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building.~~

~~b. Findings by Director. Prior to permit approval, the Director must conclude all applicable standards have been met. In addition, the Director must make the following findings of fact:~~

~~1. There will be no apparent deleterious effect upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises.~~

~~2. The premises are suitable in regard to their location, site characteristics and intended purpose. Lighting must be shuttered and shielded from surrounding properties.~~

~~(2) Special exception.~~

- ~~a. Applications for special exception must be submitted on forms supplied by the County and must contain the same information required for administrative approval.~~
- ~~b. Advertisements and public hearings must be conducted in accordance with the requirements set forth in article II of this chapter.~~

(d) through (j) are changed to (c) through (i)

Staff Note - Relocated to 34-174 and deleted redundant provisions.

DIVISION 11. - WIRELESS COMMUNICATION FACILITIES

Sec. 34-1445. - Development review process.

(a) *remains unchanged.*

(b) *Zoning.*

(1) *Administrative review.* Where provided by this division, new antenna supporting structures may be administratively approved in accordance with section 34-174. ~~an application will be reviewed by the Director for compliance with this chapter. The Director may attach conditions to any facility approved administratively if such conditions are reasonably necessary to effectuate the intent and purpose of this Code and other applicable regulations.~~

(2) *remains unchanged.*

~~(3) Final decision.~~

~~a. Approval.~~

~~1. For administrative approvals for new antenna supporting structures the County must make all of the following findings (or conclude that a finding is not applicable) before granting approval of an application:~~

~~a) The Applicant is not able to use existing wireless communications facility sites in the geographic search area; and~~

~~b) The Applicant has agreed to rent or lease available space on the antenna supporting structure, under the terms of a fair market lease, without discrimination to other wireless communications service providers; and~~

~~e) The proposed antenna supporting structure will not be injurious to historical resources, obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man made resources; and~~

~~d) The Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities.~~

~~2. For new antenna supporting structure special exceptions, the Hearing Examiner must make additional findings, as indicated in section 34-145(e)(3)b.~~

~~b. Denial. Decisions by the County to deny an application for a proposed wireless communications facilities must be in writing and supported by substantial competent evidence contained in a written record.~~

(c) *remains unchanged.*

~~(d) Review time frames.~~

~~(1) Applications for all wireless facilities subject to this division must be granted or denied within the normal time frame for the applicable type of review, but in no case later than 90 business days after the date the application is determined to be sufficient for review. If the sufficient application is not approved or denied within 90 business days, the application will be deemed automatically approved.~~

~~(2) Sufficiency review.~~

- ~~a. Upon initial submission or resubmission of application information for a wireless facility, the County shall have up to 20 business days to review the application to determine if all the required materials, in the required form, have been included in the application.~~
- ~~b. If all of the required materials have been properly submitted, the application shall be found sufficient for review.~~
- ~~c. If all of the required materials have not been properly submitted or resubmitted, the County must provide the applicant a letter with a brief explanation as to why the application is not complete for review and request the necessary additional information.~~
- ~~d. If the County does not provide the applicant written notice of the insufficiencies within 20 business days of the date of the application is initially submitted or additional information resubmitted, the application will be deemed sufficient and ready for review.~~
- ~~(3) Time frame waiver. To be effective, a waiver of the time frames must be voluntarily agreed to by the applicant and the County. The County may request, but not require, a waiver of the time frames by an applicant, except that, with respect to a specific application, a one time waiver may be required in the case of a declared local, state or federal emergency that directly affects the administration of all permitting activities of the County.~~

Staff Note - Deleted timeframes; rely on review time frames established in Administrative Code for consistency with all application types.

Subdivision II. - Residential Development

Sec. 34-1493. - Calculation of total permissible housing units.

The Lee Plan establishes a standard and maximum residential density range permissible for each residential land use category. The procedure set forth in this section must be used to determine the standard residential density as well as the total number of housing units which may be permitted within a development.

(1) *Proposed developments.*

a. thru b. remain unchanged.

c. *Development within the Mixed Use Overlay.* Prior to issuance of a development order for development, redevelopment, or infill development located within the Mixed Use Overlay which includes the area of non-residential uses in the density calculations as permitted by the Lee Plan must prepare and record a restrictive covenant or other instrument that severs the residential development rights from the non-residential project area.

(2) *remains unchanged*

DIVISION 15. ENVIRONMENTALLY SENSITIVE AREAS

Sec. 34-1575. - Coastal zones.

(a) *remains unchanged.*

(b) Development is prohibited seaward of the coastal construction setback line, as defined in section 34-2, with the exception of the following:

- (1) Improvements that provide for public beach access and enjoyment, limited to the following: Pile supported elevated dune and beach walk-over structures, beach access ramps and walkways, stairways, fences along access ways, boardwalks, pile supported viewing platforms and lifeguard support stands;

Remainder of section remains unchanged.

Staff Note – Allow certain exceptions to apply to private beach access.

DIVISION 16. - AGRITOURISM ACTIVITIES, PRODUCE STANDS, U-PICK OPERATIONS, AND
COMMUNITY GARDENS

Sec. 34-1716. - Standards for community gardens.

Community gardens may be permitted by right in zoning districts as specified in the district use regulations. Community gardens are not subject to review under chapter 10, but are subject to the following regulations:

(1) – (8) remain unchanged.

~~(9) Application. An application for administrative approval must be submitted to the Department of Community Development along with the following documentation:~~

- ~~a. Letter signed by the property owner giving permission for use of property.~~
- ~~b. Letters of no objection from adjoining property owners when the proposed community garden abuts property zoned or used for residential purposes.~~
- ~~c. A site plan, drawn to scale, showing the property size with dimensions.~~
- ~~d. The site plan must show the location of all existing structures on the property.~~
- ~~e. The site plan must reflect existing streets, easements or land reservations within the site.~~
- ~~f. The site plan must include proposed fencing and screening, if any.~~
- ~~g. The site plan must identify the source of water that will be used for irrigation purposes.~~

Staff Note - Relocated to 34-174 and deleted redundant provisions.

DIVISION 23. - MOBILE HOMES

Sec. 34-1923. - Skirting.

All mobile homes ~~shall~~must have ~~removable~~ skirting around the entire perimeter.

- (1) Skirting shall be of a durable material such as decorative block, concrete block, fiberglass, aluminum or vegetation. Junk doors or other scrap material is prohibited.
- (2) Skirting shall be maintained at all times by the resident.

Staff Note – Clarification of language regarding skirting.

DIVISION 24. - MODEL HOMES, UNITS AND DISPLAY CENTERS

Sec. 34-1954. - Model homes and model units.

(a) *Generally.* Model homes and model units may be permitted by right, by special exception, or by administrative approval as specified in zoning district use regulations and as follows:

(1) *Administrative approval:* The Director may administratively approve the location of individual model homes and model units in accordance with 34-174. ~~any new development provided the property remains under unified control and the provisions of this division are met.~~

(2) *remains unchanged.*

(b) through (f) remain unchanged.

Staff Note - Relocated to 34-174.

Sec. 34-1955. - Model display centers.

(a) Model display centers may be approved in commercially-zoned districts that permit model display centers, as indicated in the use regulations for commercial districts. Model display centers may be approved by

administrative approval in accordance with 34-174, ~~new RPD, MHPD, RVPD or MPD developments provided the property is zoned for the type of model home, model unit or recreational vehicle displayed, but require a planned development amendment in existing RPD, MHPD, RVPD or MPD districts unless already approved as a permitted use in the schedule of approved uses on the master concept plan.~~

(b) through (e) remain unchanged.

Staff Note - Relocated to 34-174.

DIVISION 26. - PARKING

Sec. 34-2020. - Required parking spaces.

(a) remains unchanged.

(b) *Non-residential uses.* Non-residential uses permitted under this chapter are subject to the following minimum requirements:

TABLE 34-2020(b). REQUIRED PARKING SPACES FOR NON-RESIDENTIAL USES

Use	Special Notes or Regulations	Minimum Required Spaces for Single-Use Development	Minimum Required Spaces for Multiple-Use Development
Retail or business establishments.			
<i>a. through b. remain unchanged.</i>			
<i>c. Very large products or commodities:</i> Household/office furnishings groups I & III; mobile home dealers; specialty retail stores group IV; used merchandise stores group IV; vehicle and equipment dealers groups I, III, IV and V; and other similar type establishments.	Note (1); 34-2021 et seq.	1 space per 700 square feet of total floor area, with a minimum of 5 spaces; dead storage is calculated at 1 space per 1,500 square feet	1 space per 700 square feet of total floor area; no parking is required for areas of the building used only as dead storage and not available to the public

(c) *Parking reduction for non-residential uses.* The Director may administratively approve a reduction to the minimum required number of parking spaces for non-residential uses by a maximum of ten percent if one or more of the following conditions are satisfied and approval is obtained in accordance with section 34-174, ~~2020(d):~~

(1) – (7) remain unchanged.

~~(d) Procedure for administrative approval.~~

~~(1) Application.~~ In addition to the information required by section 34-201 et seq., an applicant must submit the following information on the form provided by the County:

- ~~a. A list of all the uses the parking supports, the total floor area for each use, the number of parking spaces required, and the number of parking spaces proposed.~~
- ~~b. A site plan, drawn to scale, showing:

 - ~~i. The property in question, including all buildings on the property and adjacent property;~~
 - ~~ii. Entrances to and exits from the building to be used by the public;~~~~
- ~~c. A parking plan consistent with section 34-2014.~~

- ~~d. The peak parking demands for each use demonstrating that no part of a parking lot intended to satisfy required parking for a use is used to offset the parking requirements for another use unless the peak parking demands occur at different times.~~
- ~~e. When reduced parking is requested pursuant to 34-2020(e)(6) a parking demand study must be provided.~~
- ~~(2) Findings by Director. The Director must conclude all applicable standards have been met prior to approval. In addition, the Director must make the following findings of fact:~~
 - ~~a. There will be no apparent deleterious effect upon surrounding properties or the immediate neighborhood;~~
 - ~~b. The reduced parking will not have an adverse impact on the public health, safety and welfare;~~
 - ~~c. The proposed use is not solely dependent on vehicular traffic; and~~
 - ~~d. No part of a parking lot intended to satisfy required parking for a use is used to offset the parking requirements for another use unless the peak parking demands occur at different times.~~
- ~~(3) The Director's decision is not subject to review. If an applicant's request for an administrative deviation is denied, the Applicant may seek relief by filing a request for a variance or deviation in accordance with chapter 34.~~

~~(d)(e) Parking in excess of 120 percent of minimum requirements.~~

~~(1) through (2) remain unchanged.~~

~~(e)(f) Parking reduction within the mixed use overlay. The single-use development parking standard will be multiplied by the factors in Table 34-2020(c) to produce the minimum required off-street parking for properties within the mixed use overlay. Off-street parking may be provided on the lot it serves or with available spaces within a lot described in 34-2015(1) within 1,320 feet of the primary entrance of the building it serves.~~

Staff Note - Relocated to 34-174 and deleted redundant provisions.

DIVISION 30. - PROPERTY DEVELOPMENT REGULATIONS

Subdivision III. - Setbacks

Sec. 34-2192. - Street setbacks.

~~(a) through (b) remain unchanged.~~

~~(c) Modifications. Upon determination that the setbacks set forth in subsection (a) of this section are not needed, the setbacks may be modified by a variance approved pursuant to section 34-203(e), or by a deviation as part of a planned development. Right of way modifications may not be granted through this provision.~~

Subdivision IV. - Lots

Sec. 34-2221. Lot width measurement. Minimum dimensions generally.

~~Unless specifically approved otherwise as part of a planned development district approval or as set forth in article VII of this chapter:~~

~~(1) All specified lot area, width and depth dimensions are mandatory minimums.~~

~~a. Exception. The Director of Community Development may approve the subdivision of the following projects notwithstanding the noncompliance of the individual lots with property development regulations in chapter 34, and chapter 10, provided the overall development complies with all other applicable zoning requirements. The projects which may be approved in this matter are as follows:~~

~~1. The subdivision of existing commercial and industrial developments;~~

- ~~2.—Commercial or industrial developments which have received a development order;~~
- ~~3.—A final development order for a commercial or industrial development which is still effective;
or~~
- ~~4.—A new final development order application for a commercial or industrial development.~~

~~b.—Applicants seeking such relief must submit the following:~~

- ~~1.—A detailed site plan of the overall development which indicates existing and proposed lot lines, buildings and uses, streets and accessways, off street parking, water management facilities, buffering and open space.~~
- ~~2.—A detailed listing of the section number(s) and the specific regulation(s) of chapter 34, chapter 10 and/or chapter 30, if applicable, from which relief is sought. This information shall also be shown on the site plan.~~
- ~~3.—Pertinent calculations which demonstrate that the overall development complies with zoning and development standards ordinance standards, which shall include the following, if applicable:

 - ~~i.—In the event that the individual lots will not have direct access to a public street, the applicant shall demonstrate how access to such lots will be accomplished via common areas.~~
 - ~~ii.—In the event individual lots will not comply with minimum open space requirements, the applicant shall demonstrate how the required open space requirement for the overall development will be satisfied via common areas.~~~~
- ~~4.—Documents, satisfactory to the County, assuring that all common elements of the overall development are subject to unified control and will be perpetually maintained through a property owners association. The common elements must include, but are not limited to, streets and accessways, off street parking, water management facilities, buffering, fences or walls, and open space.~~

~~Upon completion of the review of documents submitted, the Director may approve the request with or without conditions to ensure that the overall development complies with the development standards.~~

~~e.—Exemptions granted under the provisions of this section may not be construed as providing relief from any development regulations not specifically listed and approved. Compliance with chapter 10, and other land development ordinances must be based on the overall development as though the lots created under this exemption did not exist. For example developments subdivided under the provisions of this section, may be considered as multiple occupancy complexes or as developments created under unified control for the purpose of determining identification signs, directory signs, and total sign area; and the ground mounted identification sign and directory signs permitted for the overall development will not be construed as off site advertising for businesses located on the subdivided lots.~~

~~(2) Except as set forth in this section for the RM 2 district, no part of a required yard or other required open space, or required off street parking or off street loading space, provided in connection with a building, structure or use shall be used to meet the requirements for any other building, structure or use, except in compliance with specified provisions made in this chapter. In the RM 2 district, when a single parcel is developed as a condominium or cooperative, or is retained under single ownership (see section 34-3102), nothing in this section shall be construed to require that each individual dwelling unit type be constructed~~

~~on a parcel which meets the minimum lot dimensions of the RM 2 district, but rather that only the total parcel so developed shall be required to meet the minimum lot areas, width, depth, setbacks and open space.~~

~~(3) No lot or yard existing on August 1, 1986, shall be reduced in size, dimension or area below the minimum requirements set out in this chapter for the zoning district in which the property is located. Lots or yards created after August 1, 1986, shall meet at least the minimum requirements established in this chapter for the zoning district in which located. Where a lot or yard is reduced below the minimum requirements as a result of dedication, condemnation, purchase or other acquisition for a public use, the resultant nonconforming lot or yard may be required to obtain a variance in accordance with article II of this chapter.~~

~~(4) The following shall apply to measurement of lot width (see also the definition of lot measurement in section 34-2):~~

~~a. through e. remain unchanged.~~

Staff Note - Relocated to 34-174.

DIVISION 39. USE, OCCUPANCY AND CONSTRUCTION REGULATIONS

Sec. 34-3103. RESERVED. ~~Permit for moving building.~~

~~No building or part of any building may be relocated or moved through or across any sidewalk, street, alley or highway within the unincorporated area of the County unless a permit has first been obtained from the division of development services in accordance with the procedures and application requirements for building relocation as set forth in section 34-209, as well as a structure moving permit from the Department of Transportation. Buildings or structures that have been designated as historic resources pursuant to chapter 22 must also obtain a certificate of appropriateness as provided in section 22-105.~~

Staff Note - Redundant with requirements of chapters 6 and 22.

ARTICLE VIII. – NONCONFORMITIES

DIVISION 1. GENERALLY

Sec. 34-3206. - Nonconformities created by eminent domain proceedings or voluntary donation of land for public purpose.

(1) *remains unchanged.*

(2) An administrative variance procedure is available to address improved parcels or parcels with approved development orders that have been rendered nonconforming or have been rendered unable to comply with current regulations as to signs, required landscape buffers, and open space because of a taking through eminent domain proceedings, by the voluntary sale of a parcel of land under the threat of eminent domain proceedings by a governmental authority, or by the voluntary donation of land to a governmental authority. The procedures to address the nonconformities referenced in this subsection are set forth in section 34-~~174(a)268~~.

Staff Note – Update cross-reference.

DIVISION 4. NONCONFORMING LOTS

Sec. 34-3272. - Lot of record defined; general development standards.

For the purposes of this division only, a lot of record is a lot which conformed to the minimum lot size for the use permitted for that lot in its zoning district at such time that the lot was created, but which lot fails to conform to the minimum lot size requirements which are established by this chapter.

(1) For the purpose of this division, a lot is created on such date that one of the following conditions occur:

a. through c. remain unchanged.

d. In the case of mobile home or recreational vehicle parks, the date when the park was approved by resolution for rezoning or a special permit for such use; provided, however, that the park subsequently obtained, on or before June 3, 1987, approval by the Board of County Commissioners of a site plan which identifies individual sites within the park and the sites meet the minimum lot size and setbacks consistent with the zoning regulations set forth in section 34-3274. Any park which was lawfully established prior to the effective date of the County's 1962 zoning regulations will be governed by the requirements of section 34-3274(1) as long as the park satisfies the remaining minimum documentary requirements and Board of County Commissioners approval set forth in this provision. Any park approved by the Board of Commissioners under Ordinance 86-36 may request to amend the approved site plan in accordance with section 34-174, by the combination of lots creating larger lots provided the approved density is not increased. ~~The park must obtain an administrative approval by the requirements set forth in section 34-145.~~ For purposes of this subsection, the term "site plan" means any one or more of the following, whichever is applicable:

Remainder of section remains unchanged.

Staff Note – Update cross-reference.