Limerock Mining in Southeast Lee County

BACKGROUND:

The Estero Village Council has received numerous complaints and calls of concern regarding expanded limerock mining east of I-75 north and south of Corkscrew Road, an area Lee County refers to as DR/GR (Density Reduction/Groundwater Resource).

Significant concerns have been raised about the effects of increased mining on major wetland systems and on aquifers that supply drinking water and a continuing influx of clean fresh water to our estuaries.

These regional effects are in addition to localized degradation of the DR/GR from increased blasting, dust, and truck traffic.

In January, the Village engaged Bill Spikowski to conduct a peer review of two recent mining studies that disagreed about the need for additional limerock mines. Mr. Spikowski is an experienced local planning consultant who has been extensively involved in DR/GR planning since the 1980s.

The Village also asked Mr. Spikowski to provide accurate answers to questions posed by Lee County regarding their proposed major overhaul of criteria for approving new limerock mines. The county's questions and their own answers are in the left column on the pages below; the answers and comments provided by Mr. Spikowski are in the right column.

-- Steve Sarkozy, Estero Village Manager

Lee County's Questions and Answers:	Village of Estero's Answers to Lee County Questions:

1. What is proposed by the Mining Amendments?

Currently, the Lee Plan requires the County to designate on a Future Land Use Map overlay (Map 14) sufficient land for continued limerock mining to meet regional demands. 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." The Lee Plan requires Lee County to serve as the entity that is responsible for ensuring adequate supply of limerock to meet the regional demand. When regional demand increases or the limerock supply is reduced, the current Lee Plan requires the County to update the industrial acreage in Southeast Lee County to reflect the acreage of limerock mining pits needed to meet local and regional demand. The proposed amendments will delete the requirement for a limerock regional demand analysis; delete Map 14, the Future Limerock Mining Overlay; and, remove or correct ambiguities in the Lee Plan. Each of those changes is discussed in more detail below:

NOTE: It is emphatically not true that the Lee Plan requires Lee County to serve as the entity that is responsible for ensuring adequate supply of limerock to meet all regional demand; see response to question 1.a on the next page.

Lee County's Questions and Answers:	Village of Estero's Answers to Lee County Questions:
1-a. Proposed Amendment: Delete the requirement for a market analysis of regional limerock supply and demand.	
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 "to meet the County's need and to export to other communities." The Lee Plan does not provide a specific methodology for completing the required market analysis.	**The Lee Plan does not provide a specific methodology for completing the required market analysis, but the plan could easily be amended to identify a methodology.**
Regardless, the County should not be responsible for supplying adequate limerock to meet regional demand as is currently required by the Lee Plan. By deleting the requirement for a market analysis, the County will no longer be required to assure adequate supply of regional limerock demand.	**It is not true that the Lee Plan commits Lee County alone to supply limerock to our entire region.** **Lee County never has been, and never will be, responsible for meeting the regional demand. Lee County is a major supplier of regional demand (estimated at 80% in 2008); Charlotte County and Collier County supply the remaining 20%. These counties are the only three in our region with mineable quantities of limerock; they will continue to share the regional burden as they have in the past.**

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1-b. Proposed Amendment: Delete Map 14 Future Limerock Mining Overlay with the requirement for amending the Lee Plan (Map 14) to designate locations for future mining.	
Map 14 shows the location of existing and future limerock mining activities and was intended to evolve over time. It is not a static map, like many assume, nor does it cap mining activities. In addition, Map 14 in no way provides protections to water resources, wildlife habitats, or residential and agricultural uses.	**Without question, Map 14 caps mining activities, because it limits the area where additional mines may be approved at this time. Although Map 14 may evolve over time, it is definitely a static map; any changes require a Comprehensive Plan amendment.**
An applicant may request an amendment to add land to the Map 14 overlay upon showing of a "clear necessity," if located in a "less disturbed environment." Clear necessity does not need to be tied to a market analysis. If the land is located "in or near existing disturbed areas," there are no review criteria for expanding Map 14. Once land has been included on Map 14, the effectiveness of evaluating the impact of mining on nearby wildlife habitat, water resources, and compatibility with nearby uses during the rezoning process is weakened.	**By not allowing new limerock mines outside the area delineated on Map 14, water resources, wildlife habitats, and residential and agricultural uses on land beyond the areas delineated on Map 14 are in fact protected.** **The methodology that Lee County used to establish the initial Map 14 was challenged by international mining interests and upheld by the courts. Changes to Map 14 should be held to the same high standards.** **It is true that land included on Map 14 has a greater likelihood of being approved for limerock mining. For that reason, Map 14 was carefully drawn to minimize compatibility conflicts with nearby uses. Map 14 will allow mines in areas where water resources and wildlife habitat are already degraded or will be degraded by mines that have already been approved; this is far better than locating new limerock mines in areas where water resources and wildlife habitat are more pristine or are restorable.**

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1.c. Proposed Amendment: Remove or correct ambiguous language.	
Ambiguous or subjective language, such as "clear necessity" or "less disturbed," results in inconsistent and conflicting interpretations of the Lee Plan. Language being removed is duplicative of existing Lee Plan provisions and Mine Excavation Planned Development (MEPD) requirements; keeping it would serve no purpose or provide additional protections.	**When mining interests challenged the current Lee Plan language by declaring it ambiguous, the courts strongly disagreed and concluded that the words have common meanings or are plain from the context.** **If the county believes that any particular language is ambiguous or overly subjective, it can be clarified.** **Protective policy language belongs in the Lee Plan. It is often repeated or expanded in the Land Development Code, but codes are designed to implement the Lee Plan and codes depend on policy direction that was established there.**

Lee County's Questions and Answers:	Village of Estero's Answers to Lee County Questions:

2. How does Lee County currently regulate mining? Will the proposed Mining Amendments to the Lee Plan and Land Development Code change how the County regulates mines?

New mining operations or existing mining operations requiring the issuance of a renewal permit must comply with the provisions of Chapter 12 (Resource Extraction) of the LDC. Chapter 12 of the LDC requires mining operations to be approved through a Mine Excavation Planned Development (MEPD) and requires the issuance of a Mine Development Order (MDO) and Mine Operation Permit (MOP) prior to the commencement of any mining or mine-related improvements on a property. The MEPD must be approved by the Board of County Commissioners through the public hearing process prior to the issuance of an MDO and MOP by the Department of Community Development.

The proposed Mining Amendments do not change the MEPD, MDO, or MOP approval processes. A request for a MEPD must be consistent with a multitude of existing Lee Plan Goals, Objectives, and Policies in order to be approved. The deletion of Map 14 (Future Limerock Mining Overlay) and the regional limerock market analysis requirement does not eliminate the need for an applicant to demonstrate that a MEPD request is consistent with established Lee Plan provisions governing future land use, compatibility with adjacent uses, minimization of adverse impacts, and the protection of wetlands and natural resources.

The first step in obtaining approval for a new mine is for land to be rezoned to MEPD (Mine Excavation Planned Development) by the Board of County Commissioners. By state law, every rezoning must be consistent with the Lee Plan.

The Mining Amendments, as proposed, would eliminate key provisions of the Lee Plan that the county now must follow when evaluating MEPD rezoning requests.

It is misleading to report that the Mining Amendments do not change the MEPD, MDO, or MOP approval *processes*. The Mining Amendments would greatly change the *criteria* for approving a new limerock mine by eliminating Map 14. The approval process may be the same, but the outcome could be the opposite.

The Lee Plan's previous provisions for evaluating rezonings were found to be inadequate for considering the approval of new limerock mines. The Mining Amendments would eliminate many of the provisions that were added in 2010 to properly regulate limerock mines – reverting to a state of inadequacy.

Lee County's Questions and Answers:	Village of Estero's Answers to Lee County Questions:
3. Are the Mining Amendments being fast-tracked?	
No. The Lee Plan Amendments were first considered at a public hearing in front of the Local Planning Agency (LPA) in December of 2018. A second public hearing was conducted in January of 2019. The companion LDC amendments were developed in response to comments made during the LPA's first public hearing and were introduced at the second public hearing. The LDC amendments were also reviewed by two advisory committees (the Executive Regulatory Oversight Committee and the Land Development Code Advisory Committee) in March of 2019. The first public hearing in front of the Board, the transmittal hearing for the Lee Plan amendments, is scheduled for April 17, 2019 (four months after the first public hearing). If the Board transmits the Lee Plan amendments, the second public hearing for the Lee Plan amendments and the two public hearings for the LDC amendments will likely not occur until June of 2019.	**Yes. The county had never indicated any intention to make sweeping changes to its policies and rules regulating limerock mining. Notice was given only upon the last-minute release of documents for the December 2018 LPA public hearing. The date of the April 17 public hearing was kept a secret until county codes forced disclosure of the final agenda.** **This process is vastly different from the two-year public effort conducted in 2008, 2009, and 2010 to overhaul policies and regulations for the entire DR/GR. Dozens of public meetings were held to solicit public input and to review technical findings and policy alternatives on these critical matters.** **It is truly unfortunate that documentation of that entire process has just been removed from Lee County's website.**

Lee County's Questions and Answers:	Village of Estero's Answers to Lee County Questions:
4. What are the future public input opportunities on the Mining Amendments? The Board is scheduled to hold a transmittal hearing for the Lee Plan amendments on April 17, 2019. The transmittal hearing will be the first of two public hearings before the Board. At this hearing, the Board will decide whether to transmit the proposed Lee Plan amendments to the State for further review by the State Land Planning Agency (Department of Economic Opportunity) and other State reviewing agencies. The Board does not adopt the amendments at the transmittal hearing. The amendments are not approved by the Board until the adoption hearing. The adoption hearing will be scheduled after comments are received from the State reviewing agencies. The State reviewing agencies have 30 days to review the proposed amendments and provide comments. The LDC amendments will also be scheduled for two public hearings around the same time as the Lee Plan amendment adoption hearing. All four public hearings will be advertised and are open for public input. Public comment is limited to 3 minutes per person.	**The county's answer to this question is accurate as to these specific Mining Amendments. The result of removing Map 14, however, will be to greatly reduce future opportunities for public input on the location of new mines.**

Lee County's Questions and Answers:	Village of Estero's Answers to Lee County Questions:
5. Do the Mining Amendments decrease public input opportunities for future mining cases?	
No. The Mining Amendments remove a requirement that Map 14 be amended to include a specific property to be mined prior to proceeding with mining. Removal of this requirement will eliminate the public hearing requirement associated with the Lee Plan amendment. However, the amendments include a policy that requires a public informational meeting to be held within the Community Plan area in which the mine is located prior to submittal of an application for rezoning to Mine Excavation Planned Development. Staff has also added public informational meeting language to the Land Development Code to implement this requirement.	**Yes. The Mining Amendments, as proposed, would significantly reduce opportunities for public input. The Mining Amendments would remove a critical requirement that Map 14 be amended to include unanticipated properties prior to requesting rezoning for mining. Comprehensive Plan amendments require at least three formal public hearings where decision-makers must consider public input.** **The proposed replacement, a single "public informational meeting" that would be held within the Community Plan area in which the mine is located, in no way provides equivalent opportunities for public input.**
6. Are any mines being approved by this proposed amendment?	
No mines will be approved as the result of the Mining Amendments. All mines are required to be approved through the public hearing process for Mine Excavation Planned Developments (see Question 2).	**No mines will receive immediate approval if the Mining Amendments are approved as proposed. However, future mines will have a much easier time obtaining rezoning approval. The Mining Amendments would eliminate the requirement for compliance with Map 14 and would eliminate public hearings that would be required to amend Map 14. The Mining Amendments would eliminate the locational criteria for future mines from the Lee Plan.**

Lee County's Questions and Answers:	Village of Estero's Answers to Lee County Questions:
7. How are the Mining Amendments related to the two pending mining zoning cases (Troyer Brothers and Old Corkscrew Plantation)?	
The Mining Amendments are not related to the pending mining zoning cases. The cases for Troyer Brothers and Old Corkscrew Plantation will proceed under their applicable regulations.	**The Mining Amendments, as proposed, are not related to the pending mining rezoning for Old Corkscrew Plantation, which by court order is proceeding under earlier regulations.** **The effect of the Mining Amendments on the Troyer Brothers application is unclear. Troyer Brothers have requested their own amendment to the Lee Plan in order to proceed with their rezoning application. The Mining Amendments could supersede the need for the Troyer Brothers amendments.**
8. Do the Mining Amendments eliminate, or loosen, existing restrictions on mining operations? Will it be easier for a mine to be approved?	
No. The Mining Amendments reinforce Lee County's obligation to protect natural resources in Southeast Lee County, and the protections that are currently in place are not being changed. All future mines are required to obtain approval through the Mine Excavation Planned Development rezoning process and are subject to the requirements of Lee County Land Development Code Chapter 12.	**Yes, and yes. The Mining Amendments, as proposed, would significantly reduce the protections that are now in place for natural resources in Southeast Lee County. Future mines would be able to obtain rezoning without demonstrating a need for additional mines, and without either conforming with the locational criteria for limerock mines (now in Map 14) or amending those criteria through a Comprehensive Plan amendment.**

Lee County's Questions and Answers:	Village of Estero's Answers to Lee County Questions:
9. What does eliminating the requirement of a market analysis accomplish?	
By eliminating the market analysis, the County would no longer be required to determine and supply regional limerock demand or expand Map 14. This change 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, nor does it provide for protection of natural resources.	**By eliminating the market analysis, the County would no longer objectively assess regional limerock demand and supply, and would no longer use Map 14 to assure a 20-year supply from mines that have already been approved.** **In the future, evidence concerning the need for additional mines would be limited to one-sided testimony from mining applicants.** **An objective market analysis is an essential tool for preventing an over-allocation of sensitive lands to mining.**

Lee County's Questions and Answers:	Village of Estero's Answers to Lee County Questions:
10. Will the Mining Amendments result in the location of limerock mines being allowed outside the Traditional Alico Road Corridor (TARC) and anywhere?	
Mines are currently located outside the TARC and limerock mines could be approved outside of the TARC with or without the Mining Amendments. It was never anticipated that all limerock mines within Lee County would be located in the TARC. The number and location of future mines will be limited by resource availability and by existing land use patterns in Southeast Lee County. As depicted on the attached exhibit, much of the land in Southeast Lee County is publicly-owned, encumbered by conservation easements, or approved for mining or residential uses. This will preclude widespread applications for limerock mining.	**A few smaller mines are currently located outside the TARC (as it is depicted on Map 14) either because they had been approved many years earlier or because they have begun mining limerock without proper approvals.** **It was always anticipated that all future limerock mines within Lee County would be located in the TARC (or within an expanded area if Map 14 were amended to achieve that result).** **Much of the land in Southeast Lee County is publicly-owned, encumbered by conservation easements, or approved for residential uses. Mining is inevitably a high-disturbance activity and can have devastating impacts on surrounding land and natural resources.**
11. Do the Mining Amendments lessen the protection of water resources and wildlife habitats?	
No. The Mining Amendments do not reduce or eliminate any protections of water resources and wildlife habitats. Protections of nearby wildlife habitat, water resources, and compatibility with nearby uses are required by provisions in Chapter 12 of the LDC. These requirements are not being amended or eliminated.	**Yes. The Mining Amendments reduce or eliminate the protections of water resources and wildlife habitats that are provided by Map 14 and by the analyses upon which Map 14 is based.** **The protections provided by Chapter 12 of the LDC are extremely limited compared to the protections afforded by Map 14 and by the broader comprehensive planning process.**

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12. Will the Mining Amendments create an influx of limerock mining zoning applications?	
There is not currently a restriction on the number of limerock mining zoning applications. Regardless of the number of applications, compliance with zoning requirements for Mine Excavation Planned Developments and applicable Lee Plan provisions will be necessary for an application to be approve	**Yes. Eliminating the Comprehensive Plan protections against excessive limerock mining will inevitably lead to new applications for limerock mines. Rezoning is never guaranteed, but without policy direction on the need for additional mines (or the absence of need), it will be much more difficult for Lee County to evaluate mining applications or to defend the denial of rezoning for additional mines.**
13. Are minimum setbacks for mining activities being reduced?	
No. In fact, excavation setbacks are proposed to be increased through the proposed LDC amendments. Existing regulations prohibit excavations within 150 feet of an adjacent residential property line. The proposed LDC amendments, if approved, will prohibit excavations within 660 feet of any residential property line. The proposed 660-foot setback for excavations is consistent with the setback requirements governing the placement of structures and equipment directly involved in the mining production process established in the Land Development Code. The proposed setback is also consistent with setback requirements established for uses that may be incompatible with surrounding residential uses such as asphalt batch plants, junkyards, salvage yards, sanitary landfills, and certain manufacturing uses.	**If proposed LDC amendments are ultimately adopted, excavation setbacks from residential property could be increased from 150 feet to 660 feet. However, other parts of the Mining Amendments would allow future mines to be approved very close to residential areas. It is hardly a policy achievement to allow new mines to be approved near residential areas and then claim credit for partially overriding that mistake with a potential moderate increase in setbacks.** **The impacts of limerock mining are greater than almost any other use, including junkyards and sanitary landfills. These impacts, which will continue for decades, include blasting, dust, noise, and traffic in addition to severe impacts on groundwater and destruction of other natural resources.**