STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SAKATA SEED CORPORATION, SAKATA AMERICA HOLDINGS, INC., AND LINDA S. NELSON,

Petitioners,

vs. Case No. 19-3848GM

LEE COUNTY, FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,

Respondent,

and

MCIN BELL, LLC,

Intervenor.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this matter on October 22 and 23, 2019, and December 16, 2019, in Fort Myers, Florida, before Francine M. Ffolkes, a duly designated Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

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STATEMENT OF THE ISSUE

Whether amendments to Respondent, Lee County's (County), comprehensive plan, CPA2018-10014, adopted by ordinance on June 19, 2019, are "in compliance" as that term is defined in section 163.3184(1)(b), Florida Statutes.

PRELIMINARY STATEMENT

On July 18, 2019, Petitioners, Sakata Seed Corporation, Sakata America Holdings, Inc., and Linda S. Nelson, filed with DOAH a petition challenging portions of CPA2018-10014 adopted by Lee County on June 19, 2019 (2019 Plan Amendments). Among other changes not challenged in this proceeding, the 2019 Plan Amendments amended the policies and maps in the Lee County Comprehensive Plan (Lee Plan) that addressed limerock mining in the Density Reduction/Groundwater Resource (DR/GR) area of southeast Lee County. The final hearing was scheduled for October 22 and 23, 2019, in Fort Myers, Florida. MCIN Bell, LLC, was granted leave to intervene on September 11, 2019.

The County filed a motion to dismiss on July 24, 2019, which was denied. On October 4, 2019, the County and Intervenor filed a Joint Motion in Limine

to exclude certain evidence, to which Petitioners filed a response in opposition. The motion was denied by Order dated October 15, 2019. A request for official recognition filed by Petitioners on October 3, 2019, was granted.

The parties jointly submitted the Joint Prehearing Stipulation on October 11, 2019, and the hearing convened as scheduled on October 22 and 23, 2019. The final day of the hearing was continued until December 16, 2019.

At the final hearing, Petitioners presented the testimony of William Spikowski and Greg Stuart, both of whom were accepted as experts in land use planning. Petitioners' Exhibits 1 through 10, and 12 were admitted into evidence. The County presented the testimony of Brandon Dunn, principal planner, who was accepted as an expert in land use planning. The County's Exhibits 15 and 26 were admitted into evidence. Intervenor presented the testimony of Tina Ekblad, who was accepted as an expert in land use planning, and Ronald E. Inge, a fact witness. Intervenor's Exhibits 18, 22, 27 through 29, and 41 were admitted into evidence. Joint Exhibits 14, 31, 32, and 34 were also admitted into evidence.

The five-volume Transcript of the hearing was filed with DOAH on January 2, 2020. The parties timely filed their proposed recommended orders that were considered in the preparation of this Recommended Order.

All references to the Florida Statutes are to the 2019 version, unless otherwise indicated.

FINDINGS OF FACT

The Parties

1. Petitioners own and operate a business and own real property within the County, and each submitted oral and written comments to the County concerning the challenged 2019 Plan Amendments during the period beginning with the transmittal hearing and ending with the adoption of the 2019 Plan Amendments by the County.

2. The County is a political subdivision of the state of Florida with the duty and responsibility to adopt and maintain a comprehensive plan under the Community Planning Act, sections 163.3161 *et seq.*, Florida Statutes (the Act).

3. Intervenor owns property and operates a business in the County, and provided oral comments to the County during the period beginning with the transmittal hearing and ending with the adoption of the 2019 Plan Amendments.

Limerock Mining in Lee County

4. Limerock mining has occurred in the County on a large scale since at least the 1970's. A significant deposit of this natural resource was found in the southeast portion of the County. The deposit of limerock was the largest mineable deposit in the state between the Lake Belt region of Dade County and the Brooksville area, and supplied the seven-county southwest Florida region with high-quality, DOT-grade limerock.

5. Three large limerock mines and several smaller mines were approved by the County throughout the years, and were currently operating. These mines existed and operated exclusively in the Southeast Lee County planning community.

6. The Southeast Lee County planning community was geographically shown on Map 16 of the Lee Plan, and was one of 22 planning communities identified in the Lee Plan. In addition to being shown on Map 16 of the Lee

Plan, the Southeast Lee County planning community was subject to a series of goals, objectives, and policies under Goal 33 of the Lee Plan. Limerock mining was specifically addressed under Objective 33.1 and policies thereunder.

7. Limerock mining in the County supplied a geographical area greater than the County itself, encompassing all or parts of seven counties in Southwest Florida. The areas were determined by the location of the mine and the costs associated with transport of material to job sites, as compared to other mines in Dade County and the Brooksville area.

8. While the approval of a limerock mine may encompass several thousand acres, mining generally occurred in smaller phases consisting of five to twenty acres over an extended period of time. In a typical year, a limerock mine would excavate 20-25 acres. Land within an approved mine that was not in active mining was generally held as vacant or agricultural land. Land that has been mined transitioned to an open water body, often with vacant land around it to facilitate future uses such as residential or conservation.

9. The extraction of this natural resource within a mining operation was a temporary use as the land went through a normal progression of vacant or agricultural use, then active excavation, then to an open water body, and potentially to some other use such as residential or conservation. The only permanent industrial use and activity at the mine was the rock crushing and processing area.

The Original Lee Plan

10. The County adopted its initial comprehensive plan under the 1989 version of the Act. The plan was found "not in compliance" by the state land planning agency at the time (DCA) and was referred to a hearing before DOAH. Prior to the hearing, the County, DCA, and numerous intervenors entered into a stipulated settlement agreement in 1989 that required the County to adopt various remedial plan amendments.

11. Those remedial amendments included the adoption of a new water resources land use classification to be applied to the southeast area of the County, which would have a maximum density of one dwelling unit per ten acres (1du/10 ac) and other uses limited to agriculture, mining, and conservation. As ultimately adopted, the name of the future land use (FLU) classification was changed to DR/GR, and it was applied to uplands in the southeast area of the County. As previously noted, limerock mining was specifically identified as a permitted use throughout the DR/GR and remains a permitted use in the DR/GR to the present.

12. The remedial amendments included the adoption of a generalized map of current limerock mining areas in the County that became known as Map 14 in the Lee Plan. Map 14 reflected mines already approved as of the date of its adoption.

13. The remedial amendments also included the adoption of a series of 125 subdistrict maps as part of the future land use map (FLUM) series that would identify the allowable acreage in each subdistrict for the proposed distribution, location, and extent of generalized land uses based upon population projections for the year 2010. This map series became known as the Year 2010 Overlay.

14. The stipulated settlement agreement also required the adoption of a policy that prohibited any development approvals for any FLU category that would cause the acreage total for any land use to be exceeded in any of the 125 subdistricts. Under the Year 2010 Overlay, limerock mining was not a specifically identified land use category, but acreage for mining was included under the "active agriculture" category while the processing facilities associated with the mines were identified under the industrial category.

15. The remedial amendments were adopted by the County in 1990 and ultimately found "in compliance" with the Act.

16. Between 1990 and 2010, the remedial amendments remained in the Lee Plan, although some changes were made to the Year 2010 Overlay that were relevant for the present case. Specifically, the Year 2010 Overlay proved to be cumbersome with its 125 subdistricts. In 1998, the map series for the 125 subdistricts was eliminated and replaced with a table, referred to as Table 1(b), that allocated acreages for various land uses to 22 "planning communities" identified by a separate map in the Lee Plan. Limerock mining remained under the active agriculture designation and allocations. These amendments were also found "in compliance" under the Act. Map 14 continued as originally adopted and showed mines that had already been approved in Lee County.

17. The Lee Plan established 30 different land use categories in the FLU Element and FLUM. Of the 30 land use categories, 17 allow residential development, 22 allow commercial development, 12 allow industrial development, but only the DR/GR category allows limerock mining.

18. Of the 22 planning communities identified in the Lee Plan, the DR/GR land use classification primarily exists in the Southeast Lee County planning community. Other planning communities that contain the DR/GR classification have policies that preclude approval of limerock mining.

19. Thus, the Lee Plan only permits limerock mining in the DR/GR land use category in the Southeast Lee County planning community. In general, natural resource extraction, i.e., limerock mining, has always been a permitted use in the DR/GR land use category of the Lee Plan, and it remained so under the 2019 Plan Amendments at issue in this proceeding.

20. The Lee Plan also contained an industrial land use category. Natural resource extraction is not permitted under the industrial land use category of the Lee Plan. Industrial land uses were addressed in Goal 7 of the Lee Plan, while natural resource extraction was addressed in Goal 10 of the Lee Plan.

21. As discussed above, the Lee Plan contained an appendix known as Table 1(b). Uses other than residential were allocated under Table 1(b) into generic groupings by planning community, including commercial, industrial, passive and active agricultural, public, conservation, and vacant land.

22. The County used Table 1(b) at the development order stage to ensure that there were adequate acres available for a particular project under the acreage allocations. The 2019 Plan Amendments did not change that process for limerock mines.

2010 Plan Amendments

23. In 2010, the County adopted a series of plan amendments (2010 Amendments) that altered the Lee Plan's treatment of the Southeast Lee County planning community in general, and limerock mining in particular.

24. The 2010 Amendments amended Table 1(b) by removing the limerock mining acreage from active agriculture and placing it in industrial. The 2010 Amendments amended Map 14 so that it was no longer the "generalized map of current limestone mining" required by the 1989 stipulated settlement agreement, but instead was a "Future Limerock Mining Overlay" that identified lands available for future limerock mining. However, all of the area shown on the map as available was already approved for mining. There was no land contained on the map that was not already associated with a previously approved mine. In addition, several mines were left off Map 14, including the Intervenor's.

25. The 2010 Amendments adopted or amended policies in the Lee Plan that: (1) allowed rezonings for new and expanded limerock mines only in the areas identified on Map 14, and required a comprehensive plan amendment to add land to Map 14; (2) provided that new or expanded limerock mine development orders could not be approved if such approval caused the acreage allocations for "industrial" in Table 1(b) to be exceeded; (3) described the location for new and expanded mines shown on Map 14 as concentrated within the "traditional Alico Road industrial corridor"; (4) required a

demonstration of "clear necessity" before allowing additional limerock mines in "less disturbed environments"; and (5) required the County to do a supply and demand analysis for limerock that addressed regional demand for the Southwest Florida region and the County's supply of limerock to meet that regional demand.

26. The 2010 Amendments did not alter the land use category in which limerock mining could be approved. Under the 2010 Amendments, limerock mining was not permitted under the Industrial FLU category, but remained a permitted use only in the DR/GR category.

27. Mr. Spikowski, the Petitioners' expert witness who served as the primary drafter of the 2010 Amendments pertaining to limerock mining, testified that much of the language contained in the 2010 Amendments was intentionally vague and ambiguous to allow "elected officials to use judgment under changed circumstances."

Changes to the Lee Plan and Southeast Lee County Since 2010

28. In 2015, the County amended the Lee Plan with regard to the DR/GR in the Southeast Lee County planning community. Specifically, the County adopted the Environmental Enhancement and Preservation Communities (EEPC) Overlay, which allowed landowners within the DR/GR in Southeast Lee County to request greater density than 1du/10ac, if done as a planned development that incorporated certain preservation and enhancement strategies to facilitate the County's objective of restoring flow ways, habitat, and other environmental features in the DR/GR.

29. Since adoption of the EEPC Overlay, several projects were approved by the County that have, or shortly will, convert large tracts of vacant and agricultural land to residential and conservation uses, thereby permanently removing these tracts from possible consideration for limerock mining.

30. In addition, since the 2010 Amendments, the County acquired several large tracts of land in the Southeast Lee County planning community, which has taken additional lands "out of play" for future limerock mining. Two of

these acquisitions were the result of lawsuit settlements between landowners and the County over mining rights after the adoption of the 2010 Amendments. A third lawsuit over mining rights affected by the 2010 Amendments remained pending against the County.

31. Another large land acquisition of approximately 3,900 acres, known as Edison Farms, was made by the County in 2017 for public use and conservation purposes.

32. Changes in development and conservation patterns in the Southeast Lee County planning community since 2010 represent significant changes that have reduced the amount of land available for limerock mining. Many of the changes in the development and conservation of lands in the affected area were the result of the County's permitting decisions under the EEPC Overlay, and its acquisition of several large tracts of land. The land currently available for potential mining was confined to several large tracts all located within the DR/GR area of the Southeast Lee County planning community.

County Staff Implementation of the 2010 Amendments

33. Since the adoption of the 2010 Amendments, County staff encountered significant issues in applying these amendments in actual practice. Brandon Dunn, the County's principal planner, testified that there were practical difficulties applying the language of the 2010 Amendments to a landowner's application to amend Map 14. The landowner's 2016 application was the first time County staff had occasion to apply the 2010 Amendments.

34. Mr. Dunn explained that the County experienced a number of problems interpreting the 2010 Amendments and reconciling the 2010 Amendments with other portions of the Lee Plan, as well with the Lee County Land Development Code (LDC). Ultimately, County staff concluded that portions of the 2010 Amendments were vague and ambiguous, a conclusion that is supported by the testimony of Mr. Spikowski who drafted the language.

35. Specifically, Mr. Dunn testified that County staff experienced the following problems interpreting and implementing various provisions of the 2010 Amendments:

a. The meaning of the terms "more disturbed" and "less disturbed" lands;

b. The meaning and intended location of the "traditional Alico Road industrial corridor";

c. The meaning of the term "regional demand"; and

d. The meaning of the term "clear necessity."

36. County staff concluded that these ambiguities and their experience showed that the clear and reasonable application of the 2010 Amendments was difficult, if not impossible.

37. County staff consulted the data and analysis generated for the 2010 Amendments seeking guidance to interpret and apply the ambiguous portions of the 2010 Amendments and found none. Furthermore, that data and analysis was now 10 to 20 years old, and considered "dated" in light of other changes that County staff was aware had occurred in Southeast Lee County in the intervening time period.

38. Accordingly, County staff identified the need to either amend portions of the 2010 Amendments or delete them. Based on policy direction from the Board of County Commissioners, and their experience, County staff proposed to delete portions of the 2010 Amendments.

39. The reasons identified for deletion of portions of the 2010 Amendments were: (1) the County's LDC for mining was significantly strengthened, which resulted in a more rigorous and detailed review of mining applications; (2) since 2010, significant changes in land use patterns in the Southeast Lee County planning community reduced the land available for limerock mining; and (3) the addition of the EEPC Overlay to the Lee Plan committed large areas of land to residential and conservation uses.

40. In addition, the County's first attempt to update the supply and demand analysis required every seven years under the 2010 Amendments demonstrated how the 2010 Amendments could be interpreted in different ways. A subsequent study by Stuart and a "peer review" analysis by Spikowski of all of the supply and demand analyses ultimately showed a lack of consistent methodology and results in the studies.

The 2019 Plan Amendments

41. On June 19, 2019, the County adopted the 2019 Plan Amendments that were the subject of this proceeding. Among other changes, the 2019 Plan Amendments rescinded or modified several provisions adopted by the 2010 Amendments. The changes:

a. Eliminated Map 14, the Future Limerock Mining Overlay;

b. Revised Table 1(b) by moving the acres identified for mining from the "industrial" allocation back to the "active agriculture" allocation where they were prior to the 2010 Amendments. The land identified for the industrial uses of a limerock mining operation, i.e., the rock crushing and processing facilities, was kept in the industrial grouping;

c. Eliminated policies that tied allowable mining acreage to Table 1(b);

d. Eliminated policies that tied new and expanded mines to the "traditional Alico Road industrial corridor";

e. Eliminated the requirement that the County perform a supply and regional demand analysis every seven years; and

f. Eliminated the requirement to apply for a comprehensive plan amendment to amend Map 14 and to demonstrate a "clear necessity" to do so.

42. In addition to the data and analysis described above, County staff reviewed the following data and analysis to prepare the 2019 Plan Amendments:

a. The 2008 Dover Kohl Study, which included The Proposed Lee Plan Amendments for Southeast Lee County; Prospects for Southeast Lee County Planning for the Density Reduction/Groundwater Resource Area; Ecological

Memorandum of the Density Reduction/Groundwater Resource Area; and Natural Resource Strategies for Southeast Lee County;

b. The 1993 Henigar & Ray Study;

c. The 2016 Waldrop Mining Study;

d. The 1989 Stipulated Settlement Agreement;

e. Chapter 12 of the County's LDC regulations; and

f. Florida Statutes.

43. Petitioners argued that this change caused the Lee Plan not to comply with the Act. However, the facts adduced at hearing do not support this contention. Neither Mr. Spikowski nor Mr. Stuart could cite any provision of section 163.3177 that required limerock mining to be identified or regulated as industrial, or that prohibited the treatment of portions of limerock mines as active agriculture.

44. In addition, the evidence adduced at hearing showed that at any given time a limerock mine comprised multiple non-industrial land uses including agriculture, vacant land, conservation, open water bodies, and excavation. Only the small portion of a mine that contained the processing facilities and batch plants was devoted to industrial use throughout the life of the mine. Therefore, classifying portions of limerock mining acreage as active agriculture rather than industrial in Table 1(b) was reasonable, particularly when the small portion of the mine that contained the processing facilities and batch plants was classified and regulated as an industrial use under Table 1(b). The retention of those industrial acres in Table 1(b) in the 2019 Plan Amendments fulfilled the statutory requirement to show the distribution, location, and extent of industrial uses under the Lee Plan.

45. Petitioners also argued that moving the limerock mining acres to the active agriculture grouping caused limerock mining to escape regulation. This argument was not persuasive since under the 2019 Plan Amendments, limerock mining continued to be regulated by the Lee Plan.

46. FLU Element Policy 1.4.5 of the Lee Plan, which is now more stringent following the 2019 Plan Amendments, required groundwater modeling to occur at the time of zoning for a new limerock mine in order to ensure consistency with those requirements. The DR/GR classification established under Policy 1.4.5 did not allow industrial uses other than those associated with mining.

47. FLU Element Goal 10 of the Lee Plan was specific to natural resource extraction including limerock mining regardless of the grouping in Table 1(b).

48. Table 1(b) was still used by the County at the development order stage to ensure that there were adequate acres available for industrial land uses associated with a limerock mine. The 2019 Plan Amendments did not change that process. FLU Element Policy 1.7.6 of the Lee Plan still required that "[n]o 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." The industrial uses in a mine would continue to be subject to this requirement.

49. Chapter 12 of the LDC extensively regulated limerock mining even after the 2019 Plan Amendments. Chapter 12 of the LDC required monitoring of limerock mining even after the 2019 Plan Amendments.

50. The Lee Plan never classified limerock mining as either an industrial or agriculture land use. Instead, it was identified as a specific activity separate from industrial, which was permitted only in the DR/GR category in the Southeast Lee County planning community.

51. Mr. Dunn testified that the industrial acres allocated under Table 1(b) for other planning communities were generally available for more traditional industrial uses such as manufacturing or warehousing. He testified that leaving the limerock mining acres under industrial uses in Table 1(b) "can give the impression that those types of uses might be allowed within Southeast Lee County, which would create an [internal] inconsistency with the future land use category. The future land use categories out there [in

Southeast Lee County] are primarily wetlands and DR/GR, and the industrial uses are not allowed within either of those categories." *See* Tr. p. 601.

52. After adoption of the 2019 Plan Amendments, the Lee Plan remained based on the approved population projection for Lee County, and provided at least the minimum amount of land required to accommodate the medium population projections published by the Office of Economic and Demographic Research through the year 2030.

53. No internal inconsistencies were created in the Lee Plan by the 2019 Plan Amendments. No internal inconsistency occurred by the County's removal of the requirement to conduct a supply and demand analysis for limerock every seven years. No other land use was required by the Lee Plan to undergo such an analysis.

54. No internal inconsistency was created by the County's elimination of the tie to the "traditional Alico Road industrial corridor," or to the requirement of "clear necessity" in order to place additional land on Map 14.

55. No internal inconsistency was created by the County's reallocation of mining acres in Table 1(b) to the "active agriculture" category.

56. Petitioners' expert Mr. Stuart pointed to several provisions of the Lee Plan that he believed were now internally inconsistent because of the 2019 Plan Amendments. However, his testimony did not demonstrate actual conflict with any of the cited provisions.

57. After deletion of Map 14 and changes to Table 1(b), the Lee Plan would continue to show the general distribution, location, and extent of limerock mining for the 2030 Plan horizon.

58. Further, the changes in the Southeast Lee County planning community over time, as well as the policy decisions by the County to incentivize conservation have limited the land available for limerock mining to certain identifiable tracts within Southeast Lee County.

59. Map 14 was not required by the Act or the Lee Plan. There were numerous other provisions of the Lee Plan that a new mine would have to comply with in order to obtain approval. All these provisions allowed the County to properly monitor and regulate mining activities.

Ultimate Findings

60. Petitioners did not prove beyond fair debate that the 2019 Plan Amendments were not in compliance.

61. The County's determination that the 2019 Plan Amendments were in compliance was fairly debatable.

CONCLUSIONS OF LAW

Standing and Scope of Review

62. To have standing to challenge a comprehensive plan amendment, a person must be an "affected person" as defined in section 163.3184(1)(a). Petitioners are affected persons and have standing to challenge the 2019 Plan Amendments.

63. An affected person challenging a plan amendment must show that the amendment is not "in compliance" as defined in section 163.3184(1)(b). "In compliance" means consistent with the requirements of sections 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248.

Burden and Standard of Proof

64. As the parties challenging the 2019 Plan Amendments, the Petitioners had the burden of proof.

65. The County's determination that the 2019 Plan Amendments are "in compliance" is presumed to be correct and must be sustained if the County's determination of compliance is fairly debatable. *See* § 163.3184(5)(c)1., Fla. Stat.

66. The term "fairly debatable" is not defined in chapter 163. In *Martin County v. Yusem*, 690 So. 2d 1288, 1295 (Fla. 1997), the Florida Supreme Court explained "[t]he fairly debatable standard is a highly deferential

standard requiring approval of a planning action if a reasonable person could differ as to its propriety." The Court further explained, "[a]n ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity." *Id.* Put another way, where there is "evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that the County's decision was anything but 'fairly debatable.'" *Martin Cty. v. Section 28 P'ship, Ltd.*, 772 So. 2d 616 (Fla. 4th DCA 2000).

67. Moreover, "a compliance determination is not a determination of whether a comprehensive plan amendment is the best approach available to the local government for achieving its purpose." *Martin Cnty. Land Co. v. Martin Cty.*, Case No. 15-0300GM RO at ¶ 149 (Fla. DOAH Sept. 1, 2015; Fla. DEO Dec. 30, 2015).

68. The standard of proof for findings of fact is a preponderance of the evidence. *See* § 120.57(1)(j), Fla. Stat.

Data and Analysis

69. Section 163.3177(1)(f) requires that all plan amendments be based on relevant and appropriate data and an analysis by the local government. The statute explains: "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." § 163.3177(1)(f), Fla. Stat. The evaluation, however, "may not include whether one accepted methodology is better than another." § 163.3177(1)(f)2., Fla. Stat.

70. The data which may be relied upon in this proceeding is not limited to the data identified or used by the local government. All data available to the local government and in existence at the time of adoption of the 2019 Plan Amendments may be presented. *See Zemel v. Lee Cty.*, 15 F.A.L.R. 2735 (Dep't of Cmty. Affairs 1993), *aff'd*, 642 So. 2d 1367 (Fla. 1st DCA 1994).

71. Relevant analyses of data need not have been in existence at the time of adoption of a plan amendment. Data existing at the time of adoption may be analyzed through the time of the administrative hearing. *Id.*

72. Data supporting an amendment must be taken from professionally accepted sources. *See* § 163.3177(1)(f)2., Fla. Stat. However, local governments are not required to collect original data. *Id.*

73. The methodology used in data collection must be professionally acceptable, but the question of whether one professionally acceptable methodology is better than another cannot be evaluated. *Id.*

74. Sections 163.3177(1)(f)3., and 163.3177(6)(a)4., require the comprehensive plan to be based on and accommodate "the minimum amount of land" required to "accommodate the medium" population projection through "at least a 10-year planning period." Section 163.3177(6)(a)4. also provides that the "amount of land designated for future land uses should allow the operation of real estate markets to provide adequate choices for . . . business and may not be limited solely by the projected population." Section 163.3177(6)(a)8.c. further provides that "future land use map amendments shall be based upon . . . an analysis of the minimum amount of land needed to achieve the goals and requirements of this section." Taken together, these statutory provisions require the plan to meet the minimum amount of land required for mining through at least the 10-year planning period, but do not prohibit the County from providing more than the minimum. Nor do they require the County to regulate the amount of land available so that it is more limited than required by statute.

75. The testimony and evidence adduced at the hearing clearly demonstrated that sufficient land was available for limerock mining through at least a 10-year planning period. Further, Petitioners did not prove that the 2019 Plan Amendments were not based on studies and data of the amount of land required to accommodate anticipated growth.

76. While each of the studies reviewed by the County came to different conclusions about the amount of land necessary to accommodate future growth, they all concluded that the Lee Plan designated at least the minimum amount of land necessary for limerock mining to accommodate future growth through the Plan's horizon. Petitioners' expert Mr. Stuart acknowledged that his own study concluded there was enough land designated for limerock mining to meet the demand through the Lee Plan's 2030 horizon.

77. Petitioners asserted that the 2019 Plan Amendments were adopted in complete disregard for the data and analysis that were produced for the 2010 Amendments, and that this constituted a violation of section 163.3177(1)(f) because the 2019 Plan Amendments were not an appropriate response to the 2010 data and analysis.

78. The issue in this proceeding was not whether the 2019 Plan Amendments were an appropriate reaction to the 2010 data and analysis. Rather, the issue was whether the 2019 Plan Amendments were an appropriate reaction to the 2019 data and analysis.

79. Petitioners' approach would mean that a local government could not amend or repeal its prior legislative acts, even if newer data and analysis, and public policy considerations provided a reasonable basis for doing so. This would be contrary to the statutory provision that "[l]ocal governments are encouraged to comprehensively evaluate and, as necessary, update comprehensive plans to reflect changes in local conditions." § 163.3191(3), Fla. Stat.

80. The data and analysis that the County relied on to adopt the 2019 Plan Amendments and detailed in the Findings of Fact, were both relevant and appropriate.

81. Petitioners argued that deleting portions of the 2010 Amendments was not required and that amending the plan to clarify certain vague and ambiguous provisions may have been a preferred reaction. However, this

proceeding was about the amendments actually proposed and not about amendments that could have been proposed. A compliance determination is not a determination of what is the best approach available to the local government for achieving its purposes. *See Martin Cty. Land Co. v. Martin Cty.*, Case No. 15-0300GM RO at ¶ 149 (Fla. DOAH Sept. 1, 2015; Fla. DEO Dec. 30, 2015).

82. Section 163.3177(1)(f) provides that the data and analysis used by the local government "may include, but not be limited to, surveys, studies . . .." The language does not require a particular type of data, but simply provides that it may be one of those listed types or some other type.

83. Comprehensive plan amendments that represent a policy or directional change do not require the degree of data and analyses that other amendments may require. *See Indian Trail Imp. Dist. v. Dep't of Cmty. Affairs*, 946 So. 2d 640, 642 (Fla. 4th DCA 2007)(reflecting that some matters of policy are obviously not susceptible to numerical computation, but instead must be informed by human judgment of elected officials).

84. Petitioners failed to demonstrate beyond debate that the 2019 Plan Amendments were not supported by appropriate data and analysis in accordance with section 163.3177(1)(f). Petitioners failed to show that the 2019 Plan Amendments did not react to the 2019 data and analysis in an appropriate manner or to the extent necessary as indicated by the data and analysis.

85. The 2019 Plan Amendments are in compliance with the requirements of sections 163.3177(1)(f), 163.3177(1)(f)3., and 163.3177(6)(a)2.a., as well as sections 163.3177(6)(a)4. and 163.3177(6)(a)8.c.

Internal Consistency

86. Section 163.3177(2) requires the elements of a comprehensive plan to be internally consistent. Petitioners asserted that the 2019 Plan Amendments caused an internal inconsistency within the Lee Plan.

87. Specifically, Petitioners contended that the 2019 Plan Amendments created inconsistency with Policy 1.7.6 of the Lee Plan, which prohibits development orders that would allow the acreage totals for residential, commercial, or industrial uses contained in Table 1(b) to be exceeded. Petitioners further contended that the reallocation of mining acres from "industrial" to "active agriculture" under Table 1(b) caused this inconsistency, contending that all land within an approved mine should be considered industrial.

88. However, the hearing testimony established that a limerock mine was actually comprised of multiple land uses at any given time, including vacant or agricultural use, conservation, open water bodies, active excavation, and the industrial uses comprised of rock crushing, processing, and batch plants. The allocation of 65 acres as "industrial" under Table 1(b) was consistent with the requirement of Policy 1.7.6 to limit development orders for these industrial uses.

89. At the hearing, Petitioners' expert Mr. Stuart testified that the 2019 Plan Amendments created other internal inconsistencies with the Lee Plan. All of the provisions identified by Mr. Stuart remained part of the Lee Plan, and any new application for a limerock mine must demonstrate consistency with each of those provisions, even after the 2019 Plan Amendments.

90. Petitioners did not prove beyond fair debate that the 2019 Plan Amendments created any internal inconsistencies in the Lee Plan.

Summary

91. The County's determination that the 2019 Plan Amendments were in compliance was fairly debatable.

92. Petitioners did not prove beyond fair debate that the 2019 Plan Amendments were not in compliance.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Economic Opportunity issue a final order determining that the 2019 Plan Amendments adopted by the County on June 19, 2019, are in compliance.

DONE AND ENTERED this 16th day of June, 2020, in Tallahassee, Leon County, Florida.

FRANCINE M. FFOLKES
Administrative Law Judge
Division of Administrative Hearings
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1230 Apalachee Parkway
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Filed with the Clerk of the
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this 16th day of June, 2020.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.