



Everglades
Law Center, Inc.
*Defending Florida's Ecosystems
and Communities*

March 24, 2008

The Honorable Stan Mayfield
Florida House of Representatives
The Capitol
Tallahassee, FL 32399-1300.

Re: House Bill PCB ENRC 08-13 (Resource Extraction)

Dear Rep. Mayfield;

As a member of the Strategic Aggregate Review Task Force, I write to strongly urge your Committee not support this bill, which would preempt the ability of local governments to protect their citizens from the impacts of mining activities. This would be completely contrary to the Consensus Recommendations adopted by the Task Force and presented to the Legislature just last month, and would undermine the time and effort put in by myself and the other members of the Task Force in developing thoughtful, consensus recommendations based on the facts and circumstances presented during our intensive deliberations. I would hope that anyone with respect for the integrity of the public policy-making process would view it as very wrong for the Legislature to disregard the Task Force's consensus recommendations in favor of an option that the Task Force chose not to recommend.

Local preemption of aggregate mining was the most controversial issue raised during last year's Legislation session and during the Task Force's deliberations. The Task Force was convened to consider competing interests and to make recommendations for improvements in policy and public investment related to the supply of aggregate materials. It was charged with evaluating the availability and disposition of construction aggregate materials. The Task Force consisted of 19 persons, representing the mining industry, construction industry, transportation industry, elected officials, environmental advocacy groups, and designees of the Florida Departments of Transportation, Community Affairs and Environmental Protection.

After approximately 70 hours of meetings and presentations, we found that facts did not support any claim that there existed a crisis of unavailability of aggregate. Last year's ruling by a Federal Judge temporarily limiting mining in a portion of the Miami-Dade "Lakebelt" region has had little or no impact on the amount of rock extracted from the area, as production simply increased in areas not subject to the court's order. The slowdown in the construction industry has also reduced demand for aggregate. Concern about a crisis in the availability of aggregate assumed a long-term, complete, shutdown of mining in the Lakebelt, which

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is not likely. The FDOT staff and consultants and other speakers explained that there is no comparison of projected future demand to the already permitted and available supply of aggregate from which one could identify an actual projected deficit of aggregate. In fact, one of the key Consensus Recommendations of the Task Force is to perform such an inventory. In short, the facts do not demonstrate that there is any need for the Legislature to intervene and disenfranchise local governments and citizens relative to one of the more intrusive and intensive land uses known to the state of Florida.

Next, the Task Force's findings make it clear that state law leaves major gaps in public protections related to mining, and that only local governments have the current legal authority to address issues such as community compatibility, safety, upland habitat protection, smaller wetlands, water supply, and other issues currently unregulated by the state. However, this bill would preclude local government from applying any ordinance, policy, rule, or regulation to address these issues if it would "prohibit or prevent" the "construction or operation" of a limestone mine "based on issues or subject matters regulated by ... [the state, under Chapter 378 or Chapter 373, Part IV.]" While this current draft of the Bill would not expressly pre-empt local authority over upland habitat and land use compatibility issues, it would preclude local governments from protecting wetlands that – due to their size – are not protected by state law and from enacting planning and regulatory standards that are based on an analysis of long-term cumulative and regional impacts and on mitigation measures that are superior to those performed under the states "one – size – fits – all" standards. It also could preempt local authority to deny mining approval that could pollute or reduce local water supplies.

Even the most limited reading of this bill would prohibit local governments from enforcing local protects for wetlands and related issues even though there is considerable concern on their part that state regulators do not possess the staff and budget resources to consistently analyze local and regional conditions, make decisions and apply conditions based upon them, or timely and adequately inspect permitted operations and enforce permit conditions. Given the looming state budget cuts, this would seem an ill-advised time to preclude local governments from supplementing the state's limited ability to protect our water resources.

In short, this law is unnecessary and harmful to Florida's communities and environment, and to the integrity of the public policy decision-making process. I would ask the Legislature not to ignore these facts or the work of the Task Force.

The Task Force's Consensus Recommendations included things like the preparation of an inventory of "mineable" aggregate resources and improved coordination among local and state agencies. These and other recommendations represent smart, sensible, useful responses to the facts and circumstances related to the full range of important issues raised by aggregate mining. They made sense to the Task Force members, the majority of whom represented the mining industry or industries dependant in large part on the mining industry, and all of whom showed great respect for the need to balance all competing interests and issues. To disregard and disrespect all of the time, effort and consensus – building that produced the Task Force Report would be to undermine the integrity of the Task Force / Commission process that is so often and wisely employed by the Legislature to address controversial or difficult issues.

I thank you very much for considering my comments.

Sincerely,

/s/ Richard Grosso, Esq.
Executive Director & General Counsel
Everglades Law Center, Inc.

cc: Members of the House Environmental and Natural Resources Council
Members of the Strategic Aggregates Review Task Force
Representative Trudi Williams
Senator Burt Saunders
Ms. Stephanie C. Kopelousos, Secretary of Florida Department of Transportation