



MEMORANDUM

Date: June 25, 2013

To: Charlotte County Board of County Commissioners
Planning and Zoning Board

From: Joanne Vernon, Assistant County Engineer
Growth Management Department

Subject: Excavation and Earthmoving Ordinance, revisions to Chapter 3-5, Article XXIII, of the Code of Laws and Ordinances of Charlotte County, Florida

At the May 21st BCC Workshop, the commissioners directed staff to make revisions to the existing Excavation and Earthmoving code to allow greater flexibility for agricultural pond excavation. Staff has made revisions to the relevant sections of the code. The entire document is not included in the attached draft, only those sections that were revised.

The following substantive changes were made:

- For exempt agricultural excavations
 - Size of pond was increased from 5 to 10 acres.
 - Depth limit was removed and changed to two feet above confining layer.
- More detail was added to the section on Soil Borings, making these requirements very similar to those of Lee County.
- Readjusted the size of a Small Scale Group IV excavation and the Large Scale Group IV excavation.
- Added a requirement that all excavated material remains on-site for all agricultural excavations.
- Added to the application content requirements that an approved permit from a state agency would be accepted in lieu of studies or reports.

ORDINANCE
NUMBER 2013-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA, AMENDING CHAPTER 3-5, ARTICLE XXIII, EXCAVATION AND EARTHMOVING; PROVIDING FOR REVISED DEFINITIONS; PROVIDING FOR REVISED EXEMPTIONS; PROVIDING FOR REVISED GENERAL LOCATION AND OPERATION STANDARDS; PROVIDING FOR REVISED GROUP IV LOCATION AND OPERATION STANDARDS; PROVIDING FOR REVISED PERMIT APPLICATION CONTENTS; PROVIDING FOR REVISED LISTING OF DEPARTMENT NAME; PROVIDING FOR REVISED GROUP IV PERMITTING PROCESSES; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

1 **Section 1.** Chapter 3-5, Article XXIII, of the Code of Laws and Ordinances of Charlotte
2 County, Florida is hereby amended by adding the underlined language and by deleting the
3 ~~stricken~~ language to provide as follows:

4
5 **Sec. 3-5-472. - Definitions.**

6 *Application* means a form prepared by the Charlotte County ~~Growth Management~~Community
7 Development Department for use in connection with this article.

8 *BCC* means the Board of County Commissioners of Charlotte County, Florida.

9 Community development department means the county's department that processes
10 applications under this article.

11 *Group II excavation* means the excavation and off-site transport for commercial purposes in
12 furtherance of a DRC-Site Plan Review final approved development activity.

13 *Group IV excavation* means ~~the an~~ excavation ~~and off-site transport of material~~ for agricultural
14 purposes. Large scale Group IV excavations shall be in accordance with a qualified agricultural
15 assistance program. Group IV excavations may only be sited on land zoned for agriculture.

16 *Excavation administrator* means the director of ~~growth management~~community development or
17 his/her designee.

18 ~~Growth management department means the county's department that processes applications~~
19 ~~under this article.~~

20
21 **Sec. 3-5-475. - Exemptions.**

22 The following activities are exempt from the requirements of this article, and shall not be
23 considered excavations, provided that all applicable federal, state and other local permits and/or
24 authorizations have been obtained:

- 25 (f) ~~Insignificant e~~Excavations directly related to agricultural uses (e.g., ditches, livestock water
26 holes, fish and alligator ponds, etc.); provided that:

- 1 (1) The land is zoned agricultural, agricultural estates or residential estates;
- 2 (2) The design otherwise meets the standards required for group I excavations;
- 3 (3) For all excavations other than ditches, but inclusive of all previous excavations on the site,
- 4 the surface area of the excavation does not exceed ~~twenty (20) percent of the property or~~
- 5 ~~five (5) ten (10) acres,; whichever is less, and the depth does not exceed twelve (12) feet.~~
- 6 ~~Excavations which are larger than five (5) acres and/or deeper than twelve (12) feet shall~~
- 7 ~~require permitting as a group I, II, III or IV excavation. However, agricultural excavations~~
- 8 ~~may exceed twelve (12) feet in depth if consistent with an approved Agricultural Ground~~
- 9 ~~and Surface Water Management (AGSWM) project from a water management district; and,~~
- 10 (4) Depth does not exceed two feet above confining layer;
- 11 (5) All excavated material remains on site.

12

13 **Sec. 3-5-476. - General location and operation standards.**

14 The following location criteria shall be employed in order to protect the health, safety and
15 welfare of the public from the possible adverse impacts of land excavation (e.g., noise, dust, water
16 table drawdown, etc.):

17 (c) In no case shall the excavation be allowed deeper than two (2) feet above the confining layer as
18 determined and certified by an engineer or geologist. Soil borings shall be conducted on any
19 site where an excavation is proposed with a depth greater than 12 feet.

20 (1) There shall be a minimum of two (2) borings per excavation. Additional borings shall occur
21 at every one-foot of elevation change within each excavation cell or area. Locations of the
22 test borings are based upon site specific conditions. If wetlands exist on-site, a minimum
23 of two borings per wetland are required, with one located at the edge of the wetland and
24 the second a distance of 25 feet away.

25 (2) Soil borings shall extend to either the bottom of the confining zone of the proposed mine
26 aquifer or ten feet deeper than the proposed depth of the mine cell or area, whichever is
27 greater.

28 (3) All borings results shall provide an explanation of the nature and depth of the overburden,
29 the likely yield of extractive material, the complete chemical characteristics of water in
30 each water-bearing strata to be penetrated, groundwater levels, and a map contouring the
31 first confining layer below the depth of excavation and thickness of the layer within the
32 project site as well as the thickness and contouring of all intermediate confining layers
33 between the land surface and depth of excavation.

34 (4) Copies of results shall be signed and sealed by an engineer or geologist.

35 (5) All test boring holes shall be plugged from bottom to top with cement once application
36 evaluation is complete.

37 (ed) There shall be no disposal of any liquid or solid wastes into the excavated area either during or
38 subsequent to excavation operations without prior review and approval by all reviewing and
39 permitting agencies. Stormwater may be discharged into the excavated area if it is included in a
40 stormwater plan submitted by the applicant and approved by the excavation administrator, and
41 all appropriate federal, state, and local permits have been obtained.

42 (ee) The standard slope, for all groups except group IV, for the side of an excavation shall be no
43 steeper than one (1) foot vertical drop for each six (6) feet of horizontal distance measured from
44 the edge of the excavation at existing grade seasonal high water table to a depth of no less
45 than five (5) feet below the mean water table. The slope for group IV shall be no steeper than
46 one (1) foot vertical drop for every four (4) feet of horizontal span. Below a depth of five (5) feet

1 from the mean water table, the grade may not exceed a drop of two (2) feet horizontal to one
2 (1) foot vertical for all groups. If the applicant desires a slope greater than the standard
3 described above, then the applicant shall specify this in the application along with a justification
4 for the deviation from the standard, according to the variance procedures set out in this article.

5 | (ef) The excavation shall be operated in such a manner that dust emissions are minimized.
6 Unpaved roads shall require regular watering or other treatments required by the county to
7 minimize dust emissions. The excavation administrator may halt the excavation operation if, in
8 the determination of the excavation administrator, dust emissions constitute a public nuisance.

9 | (fg) Burning or incineration associated with an excavation will require permits in accordance with
10 Charlotte County law and applicable federal and state law.

11 | (gh) Asphalt aprons are required for all excavations from which material is excavated and
12 transported onto any public road. Asphalt aprons shall be built according to the specifications
13 for a Type II Turnout as set forth by Florida Department of Transportation (FDOT) Standard
14 Sheet #516, as amended, or as otherwise approved by the county engineer.

15 | (hj) Excavation activity shall be conducted between the hours of 7:00 a.m. and 6:00 p.m. on
16 Monday through Friday and between the hours of 7:00 a.m. and 12:00 p.m. on Saturday, unless
17 otherwise approved by the hearing examiner.

18 | (ij) No excavation, except for ditches permitted by the applicable water management district, is
19 permitted within twenty-five (25) feet of the boundary line of a drainage or utility easement. A
20 waiver may be granted with the consent of the easement holder.

21 | (jl) It shall be unlawful to place any litter (as defined in section 1-12-4 of this Code), solid materials,
22 organic materials, or solid or hazardous waste (as defined in section 17-701.200 (73), Florida
23 Administrative Code [F.A.C.]) within any excavation that has not been previously permitted as a
24 solid waste disposal site by the State of Florida and Charlotte County. Clean gravel, sand, rock,
25 clay and clean debris (as defined in section 17-701.200 (11), F.A.C.) may be placed within an
26 excavation site pursuant to a valid and current reclamation plan approved by Charlotte County,
27 provided a quarterly report is provided to the Charlotte County Department of Environmental
28 Services listing the type, tonnage and origin of the fill. Any person with any property interest in
29 the excavation location shall be responsible for any violation of this subparagraph. Any person
30 doing the actual depositing of the materials within the excavation shall also be responsible for
31 any violation of these provisions.

32 | (km) The permittee shall comply with all applicable requirements of article I, chapter 3-3, of this
33 Code.

34 | (ln) Generators and pumps shall be well muffled, isolated by sound deadening materials and
35 located such that noise does not exceed the limits set forth in this Code or by state statute.

36 | (mq) The excavation administrator may require the applicant to utilize aesthetic features to enhance
37 the site such as fences, landscaped screening buffers or earthen berms.

38 | (rp) For the permit duration, the excavation administrator where appropriate and in the interest of
39 public safety may require the applicant to secure the excavation. The excavation may be
40 secured with a fence around the excavated area, by ensuring all access points to the
41 excavation site be secured when no activity is occurring to prevent unauthorized access, or by
42 such other means as agreed to by the excavation administrator and the applicant.

43 | (eq) Applicants engaged in off-site transport of excavated material shall provide for an inspection
44 area proximate to the excavation site egress point and provide access to FDOT and other law
45 enforcement personnel granting on-site inspection authority during, and up to one-half (1/2) hour
46 before and after, operating hours.

1
2 **Sec. 3-5-480. - Group IV location and operation standards.**

3 In addition to the general location and operation standards set forth in this article, the following
4 location and operation standards shall apply to group IV excavations:

- 5 (a) Group IV excavations are permissible only in agriculture zoning districts (AE and AG) as
6 defined in chapter 3-9 of this Code.
- 7 (b) The term of a group IV permit shall not exceed five (5) years. Prior to expiration, the permit
8 holder may request a one-time two-year extension from the excavation administrator upon
9 a showing of good cause and continued participation in a qualified agricultural program
10 without having to comply with the procedures of section 3-5-454 of this Code.
- 11 (c) No excavation, except for ditches permitted by the applicable water management district, is
12 permitted within:
- 13 (1) One hundred (100) feet of any public or private right-of-way.
- 14 (2) Twenty-five (25) feet of the side or rear property line of abutting property located in
15 areas zoned other than residential.
- 16 (3) One hundred fifty (150) feet of residential or institutional structures.
- 17 (4) Seventy-five (75) feet of any side or rear property line of abutting property located in
18 areas zoned residential.
- 19 (5) The proposed excavation is at least one thousand (1,000) feet from any residential or
20 institutional structures, unless a waiver is granted by the excavation administrator
21 upon a showing that the occupants of the affected structures consent to a reduced
22 setback.
- 23 (d) A small scale group IV excavation is one that has an excavation area size between 10 and
24 20 acres. In no case shall the excavation area exceed ten (10) percent of the irrigated
25 acreage
- 26 (e) A large scale group IV excavation is one that has an excavation area size between 20 and
27 100 acres. In no case shall the excavation area exceed The maximum excavation area
28 shall be the lesser of ten (10) percent of the irrigated acreage or one hundred (100) acres.
- 29 (f) All excavated material shall remain on-site. Removal of material is prohibited.

30
31 **Sec. 3-5-482. - Permit application contents.**

32 The excavation administrator shall establish such criteria, standards and procedures, to be
33 approved by a resolution of the BCC, and in accordance with the requirements set forth herein to
34 ensure the efficient enforcement of this article as well as provide for its uniform and consistent
35 application.

- 36 (a) All permit applications shall include:
- 37 (1) A completed application form and application fee;
- 38 (2) A copy of the soil boring report for excavations greater than twelve (12) feet deep. If
39 the depth of the excavation is twelve (12) feet or less, then no soil borings are
40 required. There shall be a minimum of two (2) borings per excavation or one (1)
41 boring per ten (10) acres of the excavation area, whichever is greater. All borings are
42 to be performed through a soil testing laboratory. Copies of results, signed and sealed
43 by an engineer or geologist, must be provided;
- 44 (c) The County will accept an approved permit from a state agency, if the applicant chooses to
45 use that information to prove that the operation will meet the standards of this code.

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2 **Sec. 3-5-485. - Group I permitting process.**

3 (a) Applicants shall submit a completed group I application form to the growth
4 managementcommunity development department together with all supporting documentation.
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6 **Sec. 3-5-486. - Group II and group III permitting processes.**

7 (a) *Preliminary application process.*

8 (1) Applicants shall submit a complete application to the growth-managementcommunity
9 development department together with all supporting documentation.
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11 **Sec. 3-5-487. - Group IV permitting processes.**

12 (a) *Small scale permit process.*

13 (1) ~~This process shall only apply to excavations in which all of the following conditions have~~
14 ~~been met:~~

15 ~~(A) The proposed excavation has a footprint of no greater than fifteen (15) acres unless all~~
16 ~~excavated material remains on-site.~~

17 ~~(B) The proposed excavation is at least twenty five (25) feet from the side or rear property line~~
18 ~~of abutting property.~~

19 ~~(C) The proposed excavation is at least one thousand (1,000) feet from any residential or~~
20 ~~institutional structures, unless a waiver is granted by the excavation administrator upon a~~
21 ~~showing that the occupants of the affected structures consent to a reduced setback.~~

22 (21) Applicants shall submit a completed group IV application to the growth
23 managementcommunity development department together with all supporting
24 documentation.

25 (32) The excavation administrator shall have five (5) working days to review the application for
26 completeness and to notify the applicant, in writing, of any deficiencies. If the excavation
27 administrator deems the application to be incomplete or otherwise deficient, all review of
28 the application shall cease until such time as the application is supplemented by the
29 applicant and deemed complete by the excavation administrator.

30 (43) Within five (5) working days of the determination that the application is complete, the
31 excavation administrator shall forward one (1) copy of the application to the applicable
32 county departments for their review in regard to compliance with this article, other
33 applicable laws and sound engineering and planning practices.

34 (54) Within fifteen (15) working days of receipt of the complete application, said
35 departments/divisions shall conduct their reviews and provide the excavation administrator
36 with reports containing their comments and recommendations concerning the contents of
37 the application, whether it should be approved or not approved as submitted and specific
38 permit conditions deemed necessary to comply with the provisions of this article and other
39 applicable law.

40 (65) Upon receipt of the aforementioned reports, the excavation administrator shall ~~carry out the~~
41 ~~following procedures in respect to the application:~~

42 ~~(A) The excavation administrator shall prepare a master report of review~~ the departmental
43 ~~reviews-reports~~ and the applicant shall be notified of the excavation administrator's
44 decision to approve or disapprove the application within seven (7) working days.

45 ~~(BA)~~ In the event the excavation administrator approves the application, the applicant shall
46 submit a performance assurance for land reclamation prior to issuance of the permit.

1 The performance assurance shall be calculated according to the procedures set forth
2 in the fee resolution.

3 | (~~76~~) Upon the applicant's satisfaction of all applicable requirements, the group IV permit shall
4 be issued. The permit shall set forth all specific permit conditions.

5 | (~~87~~) The permit shall be posted at the excavation site throughout the term of the excavation.

6 | (~~98~~) In the event that the application is denied, the excavation administrator shall not issue a
7 group IV permit to the applicant. The applicant may supplement the application or work
8 with the excavation administrator to correct any deficiencies. In the event the excavation
9 administrator and the applicant cannot resolve any remaining issues, the applicant may
10 request and receive a hearing on the application as presented.

11 | (~~109~~) If an application for a group IV permit is not approved within one (1) year of the date that
12 it was submitted, the application shall be void and the applicant must submit a new
13 application for the proposed group IV permit. An extension may be granted by the
14 excavation administrator, at his discretion, if the applicant can demonstrate that the delay
15 was due primarily to the fault of other permitting agencies and not to any fault of the
16 applicant.

17 (b) *Large scale permit process.*

18 | (~~1~~) (~~2~~) Applicants shall submit a complete application to the growth
19 management community development department together with all supporting
20 documentation. The excavation administrator shall not deem an application complete until
21 all requirements of this article and other applicable law have been met and all
22 documentation required by applicable law have been received by the excavation
23 administrator.

24 | (~~23~~) The excavation administrator shall forward copies of the application to the applicable
25 county departments for review. The departments shall employ sound scientific, engineering
26 and planning practices to determine if the proposed excavation meets the requirements of
27 this article.

28 | (~~34~~) The applicant shall be responsible for providing the county with all information necessary
29 for the issuance of a permit. In the event that the excavation administrator or the
30 departments deem the application, the supporting documentation or any portion thereof to
31 be insufficient, the excavation administrator shall provide the applicant with written notice
32 or notices of such insufficiencies as soon as practicable. The failure of the excavation
33 administrator to mention any insufficiencies in any notice shall not affect the county's right
34 to require that the unstated insufficiencies be addressed by the applicant. The excavation
35 administrator shall provide the applicant with written notice of further insufficiencies as
36 soon as practicable.

37 (A) The county, at its option, may cease all or any portion of the permit process until such
38 time as all insufficiencies are addressed to the county's satisfaction.

39 (B) If the applicant refuses or is unable to address the insufficiencies to the county's
40 satisfaction, the applicant may request and receive a hearing on the application as
41 presented.

42 | (~~45~~) Within fifteen (15) working days after receiving all information necessary for the issuance of
43 a permit, the departments shall complete their review and provide the excavation
44 administrator with a report containing its comments and recommendations as to the
45 proposed excavation's compliance with the requirements of this article.

- 1 | (56) The excavation administrator shall provide the applicant with a master report or a summary
2 | thereof within fifteen (15) working days of the excavation administrator's receipt of the
3 | departmental reports.
- 4 | (67) If the excavation administrator determines that the excavation meets the requirements of
5 | this article, the excavation administrator shall schedule a hearing on the application. The
6 | applicant may proceed to a hearing while other required permits are pending, however the
7 | application shall not be deemed complete and the excavation administrator shall not issue
8 | a permit under this article until all other are requisite permits are have been received.
- 9 | (78) Upon the applicant's receipt of a master report or summary thereof wherein excavation
10 | administrator concludes that the excavation does not meet the requirements of this article,
11 | the applicant may choose to provide additional information to the excavation administrator
12 | or to proceed with the hearing. In the latter event, the applicant must provide the
13 | excavation administrator with a written request for a hearing. A hearing will not be
14 | scheduled until such time as the excavation administrator determines that the requirements
15 | of this article have been met or the applicant provides the excavation administrator with a
16 | written request for a hearing.
- 17 | (89) If the hearing examiner determines that the application does not meet the requirements of
18 | this, the applicant may submit additional information and re-initiate the permitting process
19 | under this subsection one (1) time without paying an additional application fee.
- 20 | (910) If the hearing examiner determines that an application meets the requirements of this
21 | article, the permit shall be issued contingent upon the applicant's satisfaction of all
22 | requirements set forth in this article. A favorable ruling by the hearing examiner constitutes
23 | a conditional approval of the application, subject only to the applicant's compliance with the
24 | balance of the requirements of this article and other applicable law necessary for the
25 | issuance of the permit.
- 26 | (4011) In the event that the hearing examiner determines that an application does not
27 | meet the requirements of this article, the excavation administrator shall not issue a permit
28 | to the applicant. The applicant may seek a review of the hearing examiner's decision by
29 | filing a writ of certiorari in the circuit court.
- 30 | (412) The hearing examiner, in lieu of denial, may choose at the hearing to grant
31 | preliminary approval to the applicant if the hearing examiner determines that the remaining
32 | insufficiencies are readily addressable by the applicant and the applicant agrees to such
33 | appropriate conditions as the hearing examiner deems necessary to ensure consistency
34 | with this article. Preliminary approval represents only a general acceptance of the
35 | application as presented and shall not be construed to authorize issuance of a permit,
36 | instead said approval places appropriate conditions on the applicant to ensure compliance
37 | with the remainder of this article and other applicable law necessary for the issuance of the
38 | permit. Preliminary approval shall be valid for a period of six (6) months from the date of
39 | the hearing in which it was made or two (2) years from the date the application was
40 | submitted, whichever is greater, and upon expiration the application shall be void and the
41 | applicant will be required to submit a new application. Issuance of a permit, following
42 | preliminary approval by the hearing examiner, shall lie with, and shall not be unreasonably
43 | withheld by, the excavation administrator. The excavation administrator shall issue the
44 | permit upon a subsequent showing by the applicant that the application now complies with
45 | all the conditions placed on the applicant by the hearing examiner at the hearing in
46 | granting preliminary approval. Such conditions shall further be specified in the permit.

1 | (~~4213~~) Issuance of the permit shall be contingent upon the applicant providing the
2 | following:

3 | (A) A performance assurance for land reclamation. Subject to the provisions of subsection
4 | 3-5-486(b)(9)(B), the land reclamation performance assurance shall remain in effect
5 | throughout the duration of the permit term, plus six (6) months.

6 | (B) A roadway service life reduction fee shall be provided in an amount per truckload of
7 | excavated material to leave the site as set forth in the annual operations report as
8 | provided for by the provisions of this article to assure the maintenance of all public
9 | roads utilized.

10 | (~~4314~~) The amount of each performance assurance shall be determined in accordance
11 | with and shall otherwise comply with the fee resolution and shall be in a form acceptable to
12 | the county attorney. The BCC is hereby authorized to set and collect by fee resolution a
13 | RSLR fee, a permit issuance fee, annual monitoring and review fee, administrative
14 | amendment, permit transfer fee and such other fees and charges that the BCC deems
15 | necessary to carry out the intent of this article.

16 | (~~4415~~) Upon receipt, review, and approval of the aforementioned performance
17 | assurances, executed developer's agreement and all other requirements set forth herein or
18 | otherwise applicable to the prospective permit, a permit shall be issued setting forth all
19 | specific permit conditions.

20 | (~~4516~~) The permit must be conspicuously posted at the excavation site throughout the
21 | term of the excavation.

22 | (~~4617~~) If an application for a group IV permit is not approved within two (2) years of the
23 | date that it was first submitted, the application shall be void and the applicant must submit
24 | a new application. An extension may be granted by the excavation administrator, at his
25 | discretion, if the applicant can demonstrate that the delay was due solely to the fault of
26 | other permitting agencies and not to any fault of the applicant.
27 |

28 | **Sec. 3-5-495. - Inspection.**

29 | (a) The excavation administrator shall have the right to inspect the lands affected under this article.
30 | This right shall extend to lands already permitted to ensure compliance with this article and all
31 | conditions of the permit, as well as those lands where the applicant has submitted a complete
32 | application to the ~~growth management~~community development department for the issuance of a
33 | permit under this article.

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Section 2. Conflict with Other Ordinances. The provisions of this Ordinance shall supersede any provision of exiting ordinances in conflict herewith to the extent of said conflict.

Section 3. Severability. If any subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remainder of this Ordinance.

Section 4. Effective Date. This Ordinance shall take effect upon its filing with the Office of the Secretary of State, State of Florida.

PASSED AND DULLY ADOPTED this _____ day of _____, 2013.

BOARD OF COUNTY COMMISSIONERS OF
CHARLOTTE COUNTY, FLORIDA
By: _____

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners
By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:
By: _____
Janette S. Knowlton, County Attorney