

ARTICLE XXI. EXCAVATIONS

Forma

ARTICLE XXI. EXCAVATIONS

Sec. 3-5-441. Short title.

This article shall be known as the "Charlotte County Excavation Ordinance."

Sec. 3-5-442. Findings.

The board of county commissioners finds that properly designed excavations can provide important resources for Charlotte County in supplying vital building materials, supporting agricultural operations, controlling stormwater run-off, enhancing wildlife habitat and creating scenic beauty; but in order to minimize any detrimental effects of mining and excavation activities upon the citizenry and natural environment of Charlotte County, it is necessary to adopt land development regulations governing excavation activities.

Sec. 3-5-443. Declaration of intent and purposes.

It is the intent and purpose of this article to regulate excavation activities in such a manner as to minimize any detrimental effects to groundwater, surface water, wildlife and their habitat, the health, safety, and welfare of humans, and surrounding land use and property values.

Sec. 3-5-444. Definitions.

BBC means the board of county commissioners of Charlotte County.

Bond means a surety bond, irrevocable letter of credit, or other form of financial assurance acceptable to the county attorney and the board of county commissioners.

Commercial operation means the operation of a mining or excavation activity from a parcel in which materials are extracted from the ground and transported to a parcel other than the one on which the mining or excavation operation is located.

Commission means the board of county commissioners of Charlotte County.

Confining layer means the impermeable stratum confining the aquifer.

County. See "BCC."

County engineer means the county engineer of Charlotte County or duly authorized representative.

Depth means the vertical distance between natural grade and the bottom of the excavation.

Detention means collection and storage of surface water above the water table for subsequent controlled discharge.

Developers agreement means an agreement between the developer and the county which details the terms under which the bond is provided, and the conditions under which the county may draw upon this bond.

Discharge or discharge point means the point of outflow of water from a project site.

Ditch means a linear trench not exceeding seven-foot depth from natural grade or twenty-foot width.

Engineer means a professional engineer registered and certified to practice in the State of Florida.

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- 1 ~~*Erosion* means the weathering away of soil by the action of wind or water.~~
- 2 ~~*Excavation* means the removing of material below the seasonal high groundwater table. Class I~~
- 3 ~~excavation: Noncommercial excavation. Class II excavation: A commercial excavation directly related to~~
- 4 ~~an approved development activity. Class III excavation: A commercial excavation.~~
- 5 ~~*Existing* means the site condition prior to the proposed excavation project.~~
- 6 ~~*Fill* means the installation or deposition of materials, organic or inorganic.~~
- 7 ~~*Flood* means a temporary rise in the level of any water body or watercourse which results in the~~
- 8 ~~inundation of areas not ordinarily covered by water.~~
- 9 ~~*Groundwater* means water beneath the surface of the ground.~~
- 10 ~~*Haul route* means those roads upon which the excavated materials are transported from the~~
- 11 ~~excavation site to a publicly maintained road as specified by the county engineer. Haul route includes~~
- 12 ~~both on-site and off-site route.~~
- 13 ~~*Health department* means the Charlotte County Health Unit and the Florida HRS Department, as~~
- 14 ~~applicable, and in accordance with the Florida Statutes.~~
- 15 ~~*Lake* means a body of standing water occupying a natural basin or manmade depression in the~~
- 16 ~~earth's surface. The term "lake" does not include a body of water as defined by the word "detention."~~
- 17 ~~*Littoral zone* means that portion of a wet detention pond which is designed to contain rooted aquatic~~
- 18 ~~plants.~~
- 19 ~~*Maintenance dredging* means the excavation of sediments or other materials from presently existing~~
- 20 ~~and functional channels, ditches, canals, lakes, impoundments or other waterways of artificial~~
- 21 ~~construction or original design elevations.~~
- 22 ~~*Noncommercial operation* means the operation of an excavation activity from which materials are~~
- 23 ~~extracted from the ground, but which are utilized on the same site as that on which the excavation activity~~
- 24 ~~is located. (No transport of excavated materials occurs beyond the site boundaries of the excavation).~~
- 25 ~~*Parcel* means a lot or tract of land area having single continuous ownership from boundary to~~
- 26 ~~boundary.~~
- 27 ~~*Permit* means the written authority issued by the county engineer or designee, authorizing the~~
- 28 ~~operation of an excavation.~~
- 29 ~~*Person* includes individuals, firms, partnerships, corporations, associations, organizations, trusts,~~
- 30 ~~companies, governmental agencies, or any other legal entity.~~
- 31 ~~*Reclamation or reclamation plan* means the plan submitted to the county engineer which describes~~
- 32 ~~the restructuring, reshaping, revegetation and restoration of the excavation site upon completion of the~~
- 33 ~~excavation.~~
- 34 ~~*Retention* means the collection and storage of surface water at or above the water table without~~
- 35 ~~subsequent surface discharge.~~
- 36 ~~*Sedimentation facility or settling pond* means any structure or area which is designed to hold runoff~~
- 37 ~~water or pump discharge until suspended sediments have settled.~~
- 38 ~~*Site* means any tract, lot or parcel of land or combination of tracts, lots, or parcels of land which are~~
- 39 ~~included in a proposal for an excavation operation.~~
- 40 ~~*Water table* means the top of the saturated zone of the surficial aquifer.~~

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~~1 **Sec. 3-5-445. Permit required.**~~

~~2 Any person wishing to undertake an excavation, as defined in section 3-5-444 of this article, must
3 meet the requirements of this article and receive an excavation permit prior to the commencement of the
4 excavation activity, unless specifically exempted herein. The issuance of the excavation permit does not
5 relieve the applicant from the requirements of any other applicable local, state, or federal regulation.~~

~~6 **Sec. 3-5-446. Exemptions.**~~

~~7 The following activities are exempt from the requirements of this article, and shall not be considered
8 excavations, provided that all applicable federal, state and other local permits and/or authorizations have
9 been obtained:~~

- ~~10 (1) The installation of utilities;~~
- ~~11 (2) The construction of foundations for any building or structure, provided that a building permit has
12 been issued;~~
- ~~13 (3) Excavations relating to the accessory use of land and designed to be filled upon completion
14 (e.g. graves, septic tanks, etc.);~~
- ~~15 (4) Swimming pools;~~
- ~~16 (5) Maintenance dredging of lakes or canals; or~~
- ~~17 (6) Insignificant excavations directly related to agricultural uses (e.g., ditches, livestock water holes,
18 fish and alligator ponds, etc.); provided that:~~
 - ~~19 a. The land is zoned for agriculture;~~
 - ~~20 b. Design approval is obtained from the soil conservation service;~~
 - ~~21 c. The design meets the standards required for Group I excavations;~~
 - ~~22 d. For all excavations other than ditches, the surface area of the excavation does not exceed
23 twenty (20) per cent of the property up to five (5) acres and the depth does not exceed
24 twelve (12) feet. Excavations which are larger than five (5) acres and/or deeper than twelve
25 (12) feet shall require permitting as a Group I, II or III excavation; and~~
 - ~~26 e. All excavated material remains on site.~~

~~27 **Sec. 3-5-447. Prohibitions.**~~

- ~~28 (a) It shall be unlawful to place any litter (as defined in section 1-12-4 of the Charlotte County Code),
29 solid materials, organic materials, or solid or hazardous waste (as defined in Section 17-701.200(73),
30 F.A.C.) within any excavation that has not been previously permitted as a solid waste disposal site
31 by the State of Florida and Charlotte County. Clean gravel, sand, rock, clay and clean debris (as
32 defined in Section 17-701.200(11), F.A.C.) may be placed within an excavation pursuant to a valid
33 and current reclamation plan approved by Charlotte County, provided a quarterly report is provided
34 to the Charlotte County Mosquito Control Department listing the type, tonnage and origin of the fill.~~
- ~~35 (b) Any individual with any property interest in the excavation shall be responsible for any violation of
36 these provisions. Any individual doing the actual depositing of the materials within the excavation
37 shall also be responsible for any violation of these provisions.~~

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~~Sec. 3-5-448. Location and operation standards.~~

~~(a) No excavation, except for ditches permitted by the applicable water management district, is permitted within:~~

~~(1) Fifty (50) feet of any public or private right-of-way for Group I excavations, or one hundred (100) feet for Group II and Group III excavations.~~

~~(2) Fifty (50) feet of side or rear property line of abutting property located in areas zoned other than residential for Group I excavations, or seventy-five (75) feet for Group II and Group III excavations.~~

~~(3) One hundred (100) feet of an existing residential, church or school structure for Group I excavations, or one hundred fifty (150) feet for Group II excavations, or one thousand (1,000) feet for Group III excavations.~~

~~(4) One hundred (100) feet of an existing residential, church or school structure in areas where the excavation is on property zoned other than residential and abuts property zoned residential for Group I excavations, or one hundred fifty (150) feet for Group II excavations, or one thousand (1,000) feet for Group III excavations and in no case closer than twenty-five (25) feet from the property line.~~

~~(5) Twenty-five (25) feet of the boundary line of a drainage or utility easement for all groups of excavations.~~

~~(b) Excavation operations shall not have an adverse impact on the quality or quantity of either surface water or groundwater on surrounding properties. Applicants must ensure the proposed operations meet the standards of the Florida Department of Environmental Protection or water management district where applicable.~~

~~(c) Excavation operations shall not have a significant impact on water levels of either surface water or groundwater on surrounding properties. The county engineer may require that dewatering of an excavation be evaluated by conducting an in-place field permeability test (horizontal) on materials which are representative of the entire section of the aquifer to be dewatered. Recommended permeability test procedures include: Field Hydraulic Conductivity Test-Auger Hole Method (USDA Soil Conservation Service), Horizontal Permeability Test (Bureau of Land Reclamation and Earth Manual), and Slug Test Method (Groundwater Hydraulics, United States Geological Survey). Alternate methods may be used subject to approval by the county engineer prior to implementation. Results of testing and impact analysis using these data shall be certified by an individual registered by the State of Florida as a professional engineer. Results shall be submitted with the excavation application. In no case shall the excavation be allowed deeper than two (2) feet above the confining layer as determined and certified by a professional engineer or geologist registered by the State of Florida.~~

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

~~(e) Reclamation, when required, shall be substantially completed or significant progress made within six (6) months after the permit expiration date, or else the bond for reclamation shall be drawn upon by the county to complete the reclamation.~~

~~(f) The standard slope for the side of an excavation shall be no steeper than one (1) foot vertical drop for each four (4) feet of horizontal distance measured from the edge of the excavation at existing grade to a depth of no less than three (3) feet below the seasonal high water table elevation. Below~~

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1 a depth of three (3) feet, the grade may not exceed a drop of one (1) foot horizontal to one (1) foot
2 vertical. If the applicant desires a slope greater than the standard described above, then the
3 applicant shall specify this in the application along with a justification for the deviation from the
4 standard. The county engineer will consider whether sound engineering practices warrant a deviation
5 from the slope requirement.

6 ~~(g) The excavation shall be operated in such a manner that dust emissions are minimized. Unpaved~~
7 ~~roads may require regular watering to minimize dust emissions. The excavation operation may be~~
8 ~~halted by the county engineer if dust emissions occur which create a public nuisance.~~

9 ~~(h) Burning or incineration associated with a proposed excavation requires appropriate permits in~~
10 ~~accordance with Charlotte County regulations and all other federal and state regulatory~~
11 ~~requirements.~~

12 ~~(i) All Group II and Group III excavations with a slope exceeding 4:1 shall be secured with a fence~~
13 ~~around the excavated area to prevent unauthorized access to the excavation. All points of access~~
14 ~~shall be secured when no activity is occurring at the excavation site.~~

15 ~~(j) Asphalt aprons are required for all excavations from which material is excavated and transported on~~
16 ~~a public road(s). Asphalt aprons shall be built according to the specifications for a Type II Turnout as~~
17 ~~provided in the Florida Department of Transportation (FDOT) Standard Sheet #516, as amended, or~~
18 ~~as otherwise approved by the county engineer.~~

19 ~~(k) An Annual Report of Operations and an "as-built" certification by a professional engineer that the~~
20 ~~excavation has been built according to approved plans, shall be submitted to the county engineer for~~
21 ~~each excavation at least ninety (90) days prior to the annual anniversary date of the permit. Said~~
22 ~~report shall address the excavation and reclamation progress to date, identify lands planned for~~
23 ~~excavation during the next year, state the total amount in cubic yards of excavation material~~
24 ~~excavated to date and the proportion of such material excavated in relation to the total amount of~~
25 ~~material permitted to be excavated, state the amount in cubic yards of excavation material intended~~
26 ~~to be excavated in the next year and the proportion of such material in relation to the total amount~~
27 ~~permitted to be excavated. The report shall be prepared by a professional engineer registered by the~~
28 ~~State of Florida. The report shall also verify compliance with all other conditions of other permitting~~
29 ~~authorities and shall note the expiration dates for all permits. Failure to file the required annual~~
30 ~~progress report shall be grounds for suspension of the operating permit; however, an extension of~~
31 ~~time for filing may be granted by the county engineer upon request and for reasonable cause.~~

32 ~~(l) The county engineer shall recommend to the BCC reasonable restrictions on the hours and days of~~
33 ~~operation of any excavation when such reasonable restrictions are necessary to protect the public's~~
34 ~~health, safety and welfare.~~

35 ~~(m) The requirements of Ordinance 82-59, as amended, (Fire Prevention Code) shall be followed as~~
36 ~~applicable.~~

37 ~~(n) The county engineer shall review the proposed haul route and make a determination as to whether~~
38 ~~the proposed haul route is safe and adequately addresses any neighboring property owner's~~
39 ~~concerns. The haul road will be evaluated using the Florida D.O.T. "Manual of Uniform Minimum~~
40 ~~Standards For Design, Construction and Maintenance For Streets and Highways" (the F.D.O.T.~~
41 ~~Green Book) as a guide. The county engineer shall consider the intensity of the excavation, the~~
42 ~~length and width of the haul route, any proposed improvements to the haul route, whether the route~~
43 ~~is paved or unpaved, noise and dust anticipated when haul route is utilized, and the size and weight~~
44 ~~of trucks hauling the extracted material. Improvements of publicly maintained roads may be required~~
45 ~~to accommodate the increased traffic, including but not limited to, paved entrances,~~
46 ~~acceleration/deceleration lanes and left turn lanes. Paved entrances shall be a minimum of fifty (50)~~
47 ~~feet long with a fifty-foot radius beginning at the edge of the road pavement. All paved entrances~~
48 ~~shall also meet Ordinance 85-43 (county specifications) as amended. No excavation permit may be~~

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~~issued for an excavation which proposes to utilize, as part of a haul route, roads which are not publicly maintained, unless approval is obtained from the entity responsible for maintenance of such roads. If a haul route contains unpaved segments of road, the applicant shall maintain the unpaved segment of road in a satisfactory operating condition as specified by the county engineer and shall control dust generated by the excavation's trucks within five hundred (500) feet of any residential structure. Appropriate traffic control signs are required, including, but not limited to, stop, traffic, entering, etc., and these signs must be consistent with the Manual of Uniform Traffic Control Devices. Line of sight distances at all intersections shall be at least two hundred (200) feet.~~

~~**Sec. 3-5-449. Reclamation plan.**~~

~~A reclamation plan shall be submitted with an application for an excavation permit and shall:~~

- ~~(1) Describe the manner in which restructuring, reshaping and/or revegetation will be accomplished and show final grades of the site.~~
- ~~(2) Be drawn to a reasonable scale depending upon the size of the project as specified by the county engineer, and shall contain a north arrow.~~
- ~~(3) Show existing natural and man-made features including, but not limited to, water courses, water bodies, wetlands, general vegetative communities and concentrations, streets, utility lines, wells, septic tanks, drain fields, chemical/fuel storage tanks (surface and subsurface), easements and similar physical characteristics of the site.~~
- ~~(4) Show all areas to be reclaimed by depicting and/or describing what man-made and natural features will exist when the reclamation plan is completed.~~
- ~~(5) Depict at least two (2) typical cross sections with elevations, generally oriented north to south and east to west, showing areas to be filled, backfilled, reconstructed and/or reshaped. Water elevations shall also be shown.~~
- ~~(6) Depict the area to become a lake, where applicable.~~
- ~~(7) When a fence is required, or a wall or vegetative buffer is proposed, it shall be depicted including at least one cross-section.~~
- ~~(8) Document the type and location of vegetation to be preserved or planted including, but not limited to, grass(es), tree(s) and shrubs; and document the methods necessary to control erosion.~~
- ~~(9) All spoil piles and stock piles of material shall be removed from the site or incorporated into the reclamation plan when the excavation is complete.~~

~~**Sec. 3-5-450. Permit fees.**~~

~~The applicant for an excavation permit, transfer, extension, or waiver shall be required to tender a permit fee with the application in the amount established by resolution of the BCC.~~

~~**Sec. 3-5-451. Permit application contents.**~~

~~A permit application shall include:~~

- ~~(1) A completed application form and include the appropriate filing fee.~~
- ~~(2) A copy of soil boring report for excavations greater than twelve (12) feet deep. Soil borings shall be taken in accordance with the requirements listed in this section.~~

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1 ~~(3) Five (5) copies, signed and sealed by a professional engineer registered by the State of Florida,~~
2 ~~of the proposed reclamation plan, when required. The plan shall be prepared in accordance with~~
3 ~~section 3-5-449.~~

4 ~~(4) Five (5) copies of the site plan and aerial photos showing the plan view and cross-section of the~~
5 ~~excavation project, along with supplemental information clearly showing the following:~~

6 ~~a. The property lines, ownership and boundary of the property, including bearings and~~
7 ~~distances;~~

8 ~~b. A topographic survey clearly showing:~~

9 ~~1. Existing grades.~~

10 ~~2. Proposed grades.~~

11 ~~All grades shall be referenced to National Geodetic Vertical Datum (NGVD) or upon~~
12 ~~approval by the county engineer, a county bench mark or assumed elevation;~~

13 ~~c. Existing natural and man-made features including but not limited to, water courses,~~
14 ~~wetlands, general identification of vegetative communities, streets, utility lines, wells, septic~~
15 ~~tanks, drainfields, chemical/fuel storage tanks (surface and subsurface) existing buildings~~
16 ~~and other physical features within one hundred fifty (150) feet of the proposed excavation~~
17 ~~area's perimeter. If blasting is proposed, this information shall be provided for an area~~
18 ~~within a half-mile perimeter of the proposed excavation;~~

19 ~~d. The location of soil borings shown in the soil boring report. If the depth of the excavation is~~
20 ~~twelve (12) feet or less, then no soil borings are required. Otherwise there shall be a~~
21 ~~minimum of two (2) borings per excavation or one (1) boring per ten (10) acres of~~
22 ~~excavation area, whichever is greater. All borings are to be performed through a soil~~
23 ~~testing laboratory. Copies of results, signed and sealed by a professional engineer or~~
24 ~~geologist registered by the State of Florida, must be provided;~~

25 ~~e. Size, shape, depth, and location of the proposed excavation;~~

26 ~~f. Right-of-way lines and easement lines;~~

27 ~~g. Distance of the proposed excavation from right-of-way lines, easement lines and property~~
28 ~~lines;~~

29 ~~h. Points of access to the proposed excavation;~~

30 ~~i. North arrow, date and scale;~~

31 ~~j. Scale of reasonable size depending upon the size of the site as specified by the county~~
32 ~~engineer;~~

33 ~~k. Proposed slopes. A cross-sectional drawing referring to NGVD showing the proposed~~
34 ~~depth of the excavation area and the slope of the side and depth of the water;~~

35 ~~l. Proposed method of dewatering and use of settling ponds. Settling ponds must store~~
36 ~~twenty-four (24) hours of continuous pump discharge;~~

37 ~~m. All potable water wells or lakes within a radius of five hundred (500) feet of the proposed~~
38 ~~excavation;~~

39 ~~n. Proposed haul route and location of asphalt aprons. Information relating to the proposed~~
40 ~~haul route must include the condition of the road, i.e. paved, width, etc.; a description of the~~
41 ~~trucks to be used, i.e. weight of trucks, number of axles; and a description of any adverse~~
42 ~~impacts of the haul route could have, i.e. unreasonable noise or dust;~~

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- ~~o. Line of sight distances at all intersections;~~
- ~~p. Dust control and preventive methods;~~
- ~~q. Detailed erosion control methods such as turbidity screens and/or hay bales, seeding and mulching, and sodding;~~
- ~~r. Location and preservation plan for all proximate wetland areas to be preserved;~~
- ~~s. Phasing of the excavation, including a time schedule for clearing, excavating and reclamation and proposed hours and days of operation;~~
- ~~t. The technique which will be used to vegetate littoral zone, if littoral zones are to be included in the excavation;~~
- ~~u. Any other specific information requested by the county engineer due to the uniqueness or complexity of the excavation project.~~

~~**Sec. 3-5-452. Permit procedures.**~~

- ~~(a) Applicants for excavation permits shall submit a completed application and appropriate fee to the land development department.~~
- ~~(b) The applicant shall indicate the type of excavation permit being requested. The three (3) types of excavations for which a permit is required are:
 - ~~(1) Group I excavation. Where the applicant is proposing a noncommercial operation.~~
 - ~~(2) Group II excavation. Where the applicant is proposing a commercial operation in furtherance of an approved development activity, (i.e. subdivision, required retention, detention, golf course and lakes). Permit is limited to a reasonable time in which to complete the development.~~
 - ~~(3) Group III excavation. Where the commercial operation is solely for the purpose of extracting material and transport off site. This excavation is limited to land zoned for agriculture.~~~~
- ~~(c) The county engineer shall have five (5) working days to review the application for completeness, with regard to the application requirements of this article, and to notify the applicant, in writing, of any deficiencies that exist. If deficiencies exist, then all review of the application shall cease until such time as the application is deemed complete by the county engineer. If the application is deemed complete, the application review may proceed.~~
- ~~(d) Within five (5) working days of the determination that the application is complete, the county engineer shall forward one (1) copy of the application and drawings to the zoning, planning, and land development departments for their review.~~
- ~~(e) The zoning, planning and engineering departments shall review the extent to which the proposed excavation conforms to this article, other local regulations, and sound engineering and planning practices.~~
- ~~(f) Within fifteen (15) working days of receipt of the application and drawings from the county engineer, the zoning, planning and engineering departments shall complete their review and provide to the county engineer a report containing their comments and recommendations concerning the approval or denial of the excavation permit.~~
- ~~(g) Upon receipt of the reports from the zoning and planning departments, the county engineer shall do the following for:
 - ~~(1) Group I excavations.~~~~

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1 ~~a. Within seven (7) working days, formulate a master report of staff review and notify the~~
2 ~~applicant of the engineering department's approval or denial of the excavation permit.~~

3 ~~b. If the county engineer approves the excavation, then a permit shall be issued. The permit~~
4 ~~shall include:~~

5 ~~(1) All the conditions or stipulations imposed;~~

6 ~~(2) The operating days and times;~~

7 ~~(3) The duration of the permit. The permit shall not exceed (2) years in duration;~~

8 ~~(4) The name(s) of the owner(s) and/or applicant(s);~~

9 ~~The permit shall be posted at the excavation site for the duration of the excavation.~~

10 ~~c. If the county engineer denies the excavation, no permit will be issued; however, the~~
11 ~~applicant may request the applicant be reviewed by the BCC. In this case, the application~~
12 ~~and master report of staff review will be scheduled on the BCC's agenda to be considered~~
13 ~~at a regularly scheduled BCC meeting.~~

14 ~~(2) Group II and III excavations.~~

15 ~~a. Within seven (7) working days, formulate a master report of departmental review with~~
16 ~~recommendations to the BCC concerning approval or denial of the excavation permit.~~

17 ~~b. Prior to placing the issue on the agenda of the BCC, shall require and receive:~~

18 ~~(1) A bond in the amount of three (3) cents per cubic yard of material proposed to leave~~
19 ~~the site, to insure maintenance of the public roads being utilized by the proposed~~
20 ~~excavation. The bond must be for the length of the permit. The bond must be~~
21 ~~accompanied by an appropriate developer's agreement and both must be in a form~~
22 ~~acceptable to the county attorney. The BCC shall consider the acceptance of the~~
23 ~~bond, developer's agreement and the excavation permit at the same meeting.~~

24 ~~(2) A bond in the amount of two (2) cents per cubic yard of material authorized to leave~~
25 ~~the site, or five thousand dollars (\$5,000.00) whichever is greater to insure the~~
26 ~~completion of the reclamation plan required by section 3-5-449. The bond must be for~~
27 ~~the length of the permit plus six (6) months for reclamation. The bond must be~~
28 ~~accompanied by an appropriate developer's agreement, and both must be in a form~~
29 ~~acceptable to the county attorney. The BCC shall consider the acceptance of the~~
30 ~~bond, developer's agreement, and the excavation permit at the same meeting.~~

31 ~~c. Upon approval of the road maintenance and reclamation bonds and developer's~~
32 ~~agreement by the county attorney, schedule and give notice of the public hearing before~~
33 ~~the BCC, at a regularly scheduled meeting. Notice of the public hearing shall be given by~~
34 ~~publication in a newspaper of general circulation in the county at least fifteen (15) calendar~~
35 ~~days in advance of the hearing and by first class mail to all property owners of property~~
36 ~~situated within two hundred (200) feet of the subject property. The notice shall contain the~~
37 ~~time, date and place of the public hearing for the request and a brief description of the~~
38 ~~property involved. Notice by mail shall be accomplished by depositing the notice in the~~
39 ~~United States mail and shall be addressed to the property owner at the address shown on~~
40 ~~the latest available property records in the property appraiser's office as provided by the~~
41 ~~applicant. In addition, a sign shall be posted conspicuously on the subject property. The~~
42 ~~sign shall contain the time, date and place of the hearing and shall state the action being~~
43 ~~considered. Said sign shall be placed on the subject property at least ten (10) calendar~~
44 ~~days prior to the public hearing. Failure to strictly comply with these notice requirements~~
45 ~~shall not invalidate the proceedings.~~

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1 ~~d. If the BCC approves the excavation, the county engineer shall issue a permit. The permit~~
2 ~~shall:~~

3 ~~(1) Show all the conditions or stipulations imposed;~~

4 ~~(2) Show the operating days and times;~~

5 ~~(3) Show the length of the permit. The permit shall not exceed ten (10) years in length;~~

6 ~~(4) Show the name(s) of the owner(s) and/or applicant(s);~~

7 ~~(5) Be posted at the excavation site for the duration of the excavation.~~

8 ~~e. For excavations permitted under section 3-5-452(b)(2), the excavation must remain~~
9 ~~bonded until its completion date, for maintenance of public roads. However, the bond(s)~~
10 ~~submitted at the time of permit application may expire before the completion date,~~
11 ~~providing that:~~

12 ~~(1) The developer agrees to replace any bond(s) due to expire before the completion date~~
13 ~~at least ninety (90) days before their expiration date(s);~~

14 ~~(2) The replacement bond(s) are submitted directly to the land development department,~~
15 ~~and may be post-dated to reflect the expiration date of the earlier bond;~~

16 ~~(3) The replacement bond(s) and the expiring bond(s) shall be of the same dollar~~
17 ~~amounts.~~

18 ~~f. For excavations permitted under section 3-5-452(b)(3), the excavation must remain~~
19 ~~bonded until its completion date (i.e., the duration of the permit) plus an additional six-~~
20 ~~month period needed for reclamation. However, the completion date of the excavation may~~
21 ~~extend beyond the expiration date of the bond(s) submitted at the time of permit~~
22 ~~application, provided that:~~

23 ~~(1) The developer agrees to replace any bond(s) due to expire before the completion date~~
24 ~~at least ninety (90) days before its expiration date;~~

25 ~~(2) The replacement bond(s) are submitted directly to the land development department,~~
26 ~~and may be post-dated to reflect the expiration date of the earlier bond;~~

27 ~~(3) The replacement bond(s) and the expiring bonds shall be of the same dollar amount.~~

28 **Sec. 3-5-453. Waivers.**

29 ~~Except where allowed under the terms of this article, waivers to the provisions of this article may only~~
30 ~~be granted by the board of county commissioners. The board of county commissioners may grant a~~
31 ~~waiver to specific provisions of this article when the following has occurred:~~

32 ~~(1) The applicant has submitted a written request for waiver of specific provision(s) of this article;~~

33 ~~(2) The county departments have completed their investigation of the request and made their~~
34 ~~recommendation(s) to the BCC; and~~

35 ~~(3) The applicant has established, to the BCC's satisfaction, that:~~

36 ~~a. The waiver request is not contrary to the public interest; and~~

37 ~~b. Strict adherence to the provisions of this article would place an undue burden or hardship~~
38 ~~upon the applicant. An undue burden or hardship is defined as a situation where unique~~
39 ~~conditions to the project site exist which do not generally exist for other similar excavations.~~

ARTICLE XXI. EXCAVATIONS

1 **Sec. 3-5-454. Permit transfers and extensions.**

- 2 ~~(a) If the ownership or operation of the excavation should change during the initial or extended term of~~
3 ~~the permit, the new owner or operator shall be required to apply for and receive from the county~~
4 ~~engineer, a transfer of the original permit. The transferred permit shall be in the name of the new~~
5 ~~owner or operator and shall be required prior to the new owner or operator conducting excavation~~
6 ~~activities.~~
- 7 ~~(b) Requests for extensions to the initial permit shall be reviewed in the same manner as outlined in this~~
8 ~~article for the initial excavation permit.~~
- 9 ~~(c) All plans and data must be updated and submitted along with the application for permit extension.~~
- 10 ~~(d) If the initial permit expires before the permit extension is approved by the board of county~~
11 ~~commissioners, but the applicant has submitted a complete application for extension, the excavation~~
12 ~~work may continue, otherwise the applicant must cease all excavation work until a complete~~
13 ~~application has been submitted.~~
- 14 ~~(e) If the amount of fill to be removed from the excavation site increases in the request for permit~~
15 ~~extension, then:~~
- 16 ~~(1) Bond and developer's agreement for road maintenance shall be adjusted to reflect the~~
17 ~~increased fill leaving the site, and~~
- 18 ~~(2) The bond and developer's agreement for reclamation shall be adjusted to reflect the increased~~
19 ~~fill leaving the site.~~
- 20 ~~(f) In no event shall the duration of the original permit and any permit extensions exceed the maximum~~
21 ~~permit duration periods set forth in section 3-5-452(g).~~

22 **Sec. 3-5-455. Violations.**

- 23 ~~(a) If, at any time during the excavation operating period, the county engineer finds that permit~~
24 ~~conditions have been violated, the county engineer may issue an immediate stop work order. The~~
25 ~~stop work order shall be in effect until the excavation is brought into compliance with the permit or~~
26 ~~damage to surrounding properties has ceased.~~
- 27 ~~(b) If the same violation(s) occur again, the county engineer may recommend to the BCC the excavation~~
28 ~~permit be revoked.~~
- 29 ~~(1) The BCC shall review the application and permit violations at a regularly scheduled board~~
30 ~~meeting. The county engineer shall present evidence showing the conditions which have been~~
31 ~~violated and the actions causing damage to surrounding properties. The affected parties shall~~
32 ~~be given an opportunity to rebut the evidence. The public shall have an opportunity to present~~
33 ~~relevant statements and evidence;~~
- 34 ~~(2) If the BCC finds that permit conditions have been violated, they may revoke the permit.~~

35 **Sec. 3-5-456. Penalties.**

- 36 ~~(a) Where applicable to the purpose and scope of this article, the provisions of the Charlotte County~~
37 ~~Code Enforcement Board Ordinance, and the procedures contained therein are hereby adopted and~~
38 ~~incorporated into and made a part of reference. Violations of any provisions of this article shall be~~
39 ~~subject, but not limited to, the requirements and remedies of the Charlotte County Code Enforcement~~
40 ~~Board and/or the BCC.~~

~~PART III LAND DEVELOPMENT AND GROWTH MANAGEMENT~~

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~~ARTICLE XXI. EXCAVATIONS~~

1 ~~(b) Where applicable, any person, firm or corporation violating any provisions of this article shall, upon~~
2 ~~conviction, be punished by a fine of up to five hundred dollars (\$500.00) and/or up to sixty (60) days~~
3 ~~imprisonment in the county jail, as provided by law for the violation of county ordinances. Each day~~
4 ~~of violations shall constitute a separate offense. In addition to the penalties provided for herein, the~~
5 ~~BCC is authorized to bring suit in any court of competent jurisdiction to restrain, enjoin or otherwise~~
6 ~~prevent violations of this article.~~

7 ~~(c) Any person violating any provisions of this article shall be liable for all costs incurred by the county in~~
8 ~~connection with enforcing this article including, without limitations, attorneys fees.~~

9 ~~**Secs. 3-5-457—3-5-459. Reserved.**~~

1 ~~ARTICLE XXIII. EXCAVATION AND EARTHMOVING~~

2 ~~Sec. 3-5-470. Short title.~~

3 ~~This article shall be known as the "Charlotte County Excavation and Earthmoving Code."~~

4 ~~Sec. 3-5-471. Declaration of intent and purposes.~~

5 ~~It is the intent and purpose of this article to regulate existing and future excavation and earthmoving~~
6 ~~activities in such a manner as to minimize any direct, indirect and cumulative detrimental effects to~~
7 ~~groundwater, surface water, wildlife and its habitat, the public health, safety, and welfare, public roadway~~
8 ~~infrastructure, current and surrounding land use and property values as a result of such activities within~~
9 ~~the county.~~

10 ~~Sec. 3-5-472. Definitions.~~

11 ~~Unless specifically defined below or within the latest edition of *The Latest Illustrated Book of*~~
12 ~~*Development Definitions* published by the Center for Urban Policy Research, words and phrases used in~~
13 ~~this article shall be ascribed a meaning which they have in common usage and which gives this article its~~
14 ~~most reasonable application.~~

15 ~~*AASHTO* means the American Association of State Highway and Transportation Officials.~~

16 ~~*Applicant* means a person (as defined hereinafter) who submits an application pursuant to this~~
17 ~~article.~~

18 ~~*Application* means a form prepared by the Charlotte County Community Development Department~~
19 ~~for use in connection with this article.~~

20 ~~*BCC* means the board of county commissioners of Charlotte County, Florida.~~

21 ~~*Community development department* means the county's department that processes applications~~
22 ~~under this article.~~

23 ~~*Confining layer* means the impermeable stratum confining an aquifer.~~

24 ~~*County* means Charlotte County, a political subdivision of the State of Florida.~~

25 ~~*County Code* means the Code of Laws and Ordinances, Charlotte County, Florida.~~

26 ~~*County engineer* means the county's engineer or duly authorized representative.~~

27 ~~*Cumulative or cumulative impact* means the total impact on public infrastructure, safety and~~
28 ~~environmental resources in the surrounding region that results from a proposed excavation, when added~~
29 ~~to the impacts of other past, present, and reasonably foreseeable commercial or residential development~~
30 ~~activity.~~

31 ~~*Depth* means the vertical distance between natural grade and the bottom of an excavation.~~

32 ~~*Detention* means the collection and storage of surface water above the water table for subsequent~~
33 ~~controlled discharge.~~

34 ~~*Discharge or discharge point* means the point of outflow of water from an excavation site.~~

35 ~~*Ditch* means a linear trench not exceeding seven (7) feet in depth as measured from natural grade~~
36 ~~and twenty (20) feet in width.~~

~~———— PART III — LAND DEVELOPMENT AND GROWTH MANAGEMENT~~

~~CHAPTER 3-5 — PLANNING AND DEVELOPMENT~~

~~ARTICLE XXIII. EXCAVATION AND EARTHMOVING~~

1 ~~Earthmoving means any and all activities resulting in the repositioning of terrain including the~~
2 ~~excavation of lakes, pits, and depressions; mounding, stockpiling, the creation of berms; and the~~
3 ~~transporting and installing of fill.~~

4 ~~Engineer means a professional engineer registered and certified to practice in the State of Florida~~
5 ~~who is retained by the permittee, or an agent of the permittee.~~

6 ~~Environmental impact statement ("EIS") means a narrative report acceptable to the excavation~~
7 ~~administrator accompanied by graphic illustrations which discusses and depicts the impact of a proposed~~
8 ~~excavation upon vegetation, wildlife, wildlife habitat, endangered or threatened species, air quality,~~
9 ~~surface and groundwater quality, projected contaminants, tailings or other by-products and other issues~~
10 ~~concerning the public's health, safety and welfare. The EIS shall include a Florida Land Use Cover and~~
11 ~~Forms Classification System (FLUCCS) map.~~

12 ~~Erosion means the weathering away of soil by the action of wind and/or water.~~

13 ~~Excavation means the removing of material below the seasonal high groundwater table, unless such~~
14 ~~removal is expressly excepted herein:~~

15 ~~Group I excavation means the excavation for noncommercial purposes (there is neither sale nor~~
16 ~~transport of the excavated material off-site except that up to ten thousand (10,000) cubic yards may be~~
17 ~~transported or sold off-site).~~

18 ~~Group II excavation means the excavation and off-site transport for commercial purposes in~~
19 ~~furtherance of a Site Plan Review final approved development activity.~~

20 ~~Group III excavation means the excavation and off-site transport for commercial purposes, consisting~~
21 ~~of extracting material and transporting it offsite. Group III excavations may only be sited on land zoned~~
22 ~~extraction and mining (EM).~~

23 ~~Group IV excavation means an excavation for agricultural purposes. Large scale Group IV~~
24 ~~excavations shall be in accordance with a qualified agricultural assistance program. Group IV excavations~~
25 ~~may only be sited on land zoned for agriculture.~~

26 ~~Excavation area means the area in which an excavation does or is proposed to occur.~~

27 ~~Excavation administrator means the director of community development or his/her designee.~~

28 ~~Excavation site means the parcel or parcels on which excavation activity does or is proposed to~~
29 ~~occur.~~

30 ~~Fee resolution means resolutions passed by the BCC from time to time pursuant to this article that~~
31 ~~set forth fees, bond amounts, performance assurance requirements and other amounts payable by an~~
32 ~~applicant and permittee.~~

33 ~~Fill means the installation or deposition of manmade deposits of earth to increase the vertical or~~
34 ~~horizontal extent of land or to build embankments.~~

35 ~~FDEP means the Florida Department of Environmental Protection or its successor agency.~~

36 ~~FDOT means the Florida Department of Transportation.~~

37 ~~Final application process means the final evaluation of an application for a group II, III or IV~~
38 ~~excavation by the county and the excavation administrator to determine if the applicant has complied with~~
39 ~~the requirements of this article that were not addressed during the preliminary application process and~~
40 ~~other applicable laws necessary for the issuance of a group II, III or IV permit.~~

41 ~~Final hearing means a hearing held subsequent to the final application process during which an~~
42 ~~application for a group II, III or IV excavation is adjudicated by the hearing examiner for compliance with~~
43 ~~the final application process.~~

~~PART III LAND DEVELOPMENT AND GROWTH MANAGEMENT~~

~~CHAPTER 3-5 PLANNING AND DEVELOPMENT~~

~~ARTICLE XXIII. EXCAVATION AND EARTHMOVING~~

1 ~~FLUCFCS or FLUCCS means the Florida Land Use Cover and Forms Classification System as~~
2 ~~developed by the Florida Department of Transportation.~~

3 ~~Geologist means a professional geologist registered and certified to practice in the State of Florida~~
4 ~~who is retained by the permittee or an agent of the permittee.~~

5 ~~Groundwater means water beneath the surface of the ground.~~

6 ~~Haul route means paved or unpaved roads within and outside the excavation site which the permit~~
7 ~~specifies can be utilized to transport excavated materials to an on-site or off-site destination. In cases~~
8 ~~where material will be hauled to multiple locations, the terminus of the haul route shall be the nearest~~
9 ~~road and bridge road or state maintained road.~~

10 ~~Health department means the county's health unit and the Florida HRS department, as applicable.~~

11 ~~Hearing examiner means an individual selected pursuant to section 3-5-488 to adjudicate preliminary~~
12 ~~applications at preliminary hearings and final applications at final hearings.~~

13 ~~Lake means a body of standing water occupying a natural basin or manmade depression in the~~
14 ~~earth's surface. The term "lake" does not include a body of water as defined by the word "detention".~~

15 ~~Landowner(s) means a person or persons, other than the applicant, who owns the land that is the~~
16 ~~subject of the proposed excavation activity.~~

17 ~~Littoral zone means that portion of a water body which contains rooted emergent aquatic plants.~~

18 ~~Maintenance dredging means the excavation of sediments or other materials from presently existing~~
19 ~~and functional channels, ditches, canals, lakes, impoundments or other waterways of artificial~~
20 ~~construction to original design elevations.~~

21 ~~Master report means a report compiled by the excavation administrator from application reviews by~~
22 ~~the various county departments.~~

23 ~~NGVD means the National Geodetic Vertical Datum.~~

24 ~~Performance assurance means a surety bond, irrevocable letter of credit or other collateral~~
25 ~~acceptable to the county attorney provided by the permittee as security for the permittee's performance of~~
26 ~~its obligations in the permit and the development agreement.~~

27 ~~Permit means a written authority issued pursuant to this article that authorizes excavation and/or~~
28 ~~earthmoving.~~

29 ~~Permit amendment means the written authority issued pursuant to this article that authorizes a~~
30 ~~change in the terms or conditions of a permit. A permit amendment may be either non-administrative or~~
31 ~~administrative.~~

32 ~~Non-administrative permit amendment means a permit amendment that changes a specific~~
33 ~~permit condition(s).~~

34 ~~Administrative permit amendment means a permit amendment that does not change a specific~~
35 ~~permit condition(s).~~

36 ~~Permittee means the person to whom the permit is issued by the county.~~

37 ~~Person means individuals, firms, partnerships, corporations, associations, organizations, trusts,~~
38 ~~companies, governmental agencies or any other entity.~~

39 ~~Preliminary application process means the initial evaluation of an application for a group II, III or IV~~
40 ~~excavation by the county and the excavation administrator to determine if the proposed excavation meets~~
41 ~~the requirements of this article in respect to location, setbacks, quantity of fill, proposed haul route(s),~~
42 ~~hours of operation, blasting requirements, rock crushing and necessary variances.~~

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1 ~~Preliminary hearing means a hearing held subsequent to the preliminary application process during~~
2 ~~which an application for a group II, III or IV excavation is adjudicated by the hearing examiner for~~
3 ~~compliance with the preliminary application process.~~

4 ~~Qualified agricultural assistance program means a national, state, or local government program that~~
5 ~~provides assistance to agricultural operators to reduce point and nonpoint source pollution, such as~~
6 ~~nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with total daily~~
7 ~~maximum loads (TMDLs), where available; reduces Florida aquifer withdrawals; and/or conserves,~~
8 ~~restores or augments the area's water resources and ecology by promoting surface water and~~
9 ~~groundwater resource sustainability.~~

10 ~~Qualified environmental professional means an individual, acceptable to the Florida Fish and Wildlife~~
11 ~~Conservation Commission, United States Fish and Wildlife Service or to the county who can show~~
12 ~~demonstrated expertise in conducting local, state or federally protected/listed species surveys.~~

13 ~~Reclamation plan means the plan submitted to the excavation administrator which describes the~~
14 ~~manner in which the excavation site will be restructured, reshaped, re-vegetated and otherwise restored.~~

15 ~~Retention means the collection and storage of surface water at or above the water table without~~
16 ~~subsequent surface discharge.~~

17 ~~Roadway service life reduction (RSLR) means the reduction in the interval(s) of time within which~~
18 ~~haul route(s) or portions thereof require rehabilitation due to intensive, accelerated wear and tear on their~~
19 ~~pavement structure as a result of earthmoving authorized under an excavation permit.~~

20 ~~Roadway service life reduction fee (RSLR fee) means a fee collected for mitigating roadway service~~
21 ~~life reduction and rehabilitating haul routes or portions thereof.~~

22 ~~Settling pond means any structure or area that is designed to hold runoff water or pump discharge~~
23 ~~until suspended sediments have settled.~~

24 ~~Site means any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land which are~~
25 ~~included in a proposal for an excavation operation.~~

26 ~~Site plan review means the process established pursuant to section 3-9-5.1.~~

27 ~~Specific permit conditions means the provisions of a permit that govern the following matters:~~

28 ~~(1) Operating days and times.~~

29 ~~(2) Permit duration.~~

30 ~~(3) Quantity of material to be excavated.~~

31 ~~(4) Maximum depth of excavation.~~

32 ~~(5) Blasting and rock crushing restrictions.~~

33 ~~(6) Any additional conditions or stipulations imposed by the excavation administrator or the hearing~~
34 ~~examiner.~~

35 ~~Unauthorized communication means any direct or indirect communication, in any form, whether~~
36 ~~written, verbal or graphic, concerning a substantive issue by any person with the hearing examiner.~~

37 ~~Water management district means the South Florida Water Management District or the Southwest~~
38 ~~Florida Water Management District, as applicable.~~

39 ~~Water table means the top of the saturated zone of the surficial aquifer.~~

~~PART III LAND DEVELOPMENT AND GROWTH MANAGEMENT~~

~~CHAPTER 3-5 PLANNING AND DEVELOPMENT~~

~~ARTICLE XXIII. EXCAVATION AND EARTHMOVING~~

1 **Sec. 3-5-473. Applicability.**

- 2 ~~(a) This article shall apply within the unincorporated areas of Charlotte County to any person, not~~
3 ~~already in possession of a permit, proposing to initiate an excavation or those previously permitted~~
4 ~~but seeking to expand or otherwise modify an existing excavation.~~
- 5 ~~(b) The provisions of chapter 3-5, article XXI, where applicable, and article XXIII (Ordinance No. 2003-~~
6 ~~003), shall continue to apply to any person presently conducting an excavation and/or earthmoving~~
7 ~~activity, as defined in this article, on the effective date of this article provided that excavations~~
8 ~~ongoing on the effective date of this article shall be subject to the fees provided for in this article and~~
9 ~~the fee resolution.~~
- 10 ~~(c) Compliance with the requirements of this article shall not relieve any party from complying with the~~
11 ~~requirements of any other applicable local, state, or federal law.~~

12 **Sec. 3-5-474. Nonconformities.**

13 ~~An excavation approved by the county, which is in operation on the effective date of this article, or~~
14 ~~any subsequent revisions thereto, and is made nonconforming by this article, may continue to operate in~~
15 ~~accordance with its permit. However, the excavation may not be expanded, extended or otherwise~~
16 ~~modified unless the excavation operation complies with the provisions of this article.~~

17 ~~Previously permitted excavations and applications that have been deemed complete, as determined~~
18 ~~by the excavation administrator, per section 3-5-482 of the Code on the effective date of this article, as~~
19 ~~amended, which are located in agricultural zoning districts (AE and AG) as defined in chapter 3-9 of the~~
20 ~~Code shall be treated as nonconformities as provided for by section 3-9-10 of the Code.~~

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

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

- 25 ~~(a) The installation of utilities;~~
- 26 ~~(b) The construction of foundations for any building or structure provided that a building permit has been~~
27 ~~issued;~~
- 28 ~~(c) Excavations relating to the accessory use of land and designed to be filled upon completion (e.g.,~~
29 ~~graves, septic tanks, etc.);~~
- 30 ~~(d) Swimming pools;~~
- 31 ~~(e) Maintenance dredging of lakes or canals; or~~
- 32 ~~(f) Excavations directly related to agricultural uses (e.g., ditches, livestock water holes, fish and alligator~~
33 ~~ponds, etc.); provided that:~~
- 34 ~~(1) The land is zoned agricultural, agricultural estates or residential estates;~~
- 35 ~~(2) The design otherwise meets the standards required for group I excavations;~~
- 36 ~~(3) For all excavations other than ditches, but inclusive of all previous excavations on the site, the~~
37 ~~surface area of the excavation does not exceed ten (10) acres;~~
- 38 ~~(4) Depth does not exceed two (2) feet above confining layer;~~
- 39 ~~(5) All excavated material remains on site.~~

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- 1 ~~(g) Stormwater retention/detention ponds otherwise approved by the county not exceeding twenty (20)~~
2 ~~percent of the site area or three (3) acres, and for which the depth does not exceed twelve (12) feet,~~
3 ~~slopes are graded at 6:1 or flatter to a depth of no less than five (5) feet below the mean water table,~~
4 ~~and all excavated material remains on-site.~~
- 5 ~~(h) Pursuant to a reclamation plan submitted with an application, areas constituting the littoral zone,~~
6 ~~beginning at the littoral shelf, detailed by applicable water management district permit(s), and ending~~
7 ~~at the top bank, shall not be taken into account for purposes of determining an excavation perimeter,~~
8 ~~provided no commercial excavations occur within said areas.~~
- 9 ~~(i) Excavation or earthmoving incidental to public roadway construction provided that all other required~~
10 ~~permits, including stormwater, are obtained.~~

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

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

- 15 ~~(a) Excavation operations shall not have an adverse impact on the quality or quantity of~~
16 ~~groundwater or surface water of surrounding properties. Applicants must ensure the proposed~~
17 ~~operations meet all standards of the health department and the applicable water management~~
18 ~~district.~~
- 19 ~~(b) The excavation administrator may require that the de-watering proposed in the application be~~
20 ~~analyzed by conducting an in-place field permeability test (horizontal) at one or more locations~~
21 ~~representative of the entire section of the aquifer to be de-watered. Necessary permeability~~
22 ~~tests may include but are not limited to: Field Hydraulic Conductivity Test Auger Hole Method~~
23 ~~(USDA Soil Conservation Service), Horizontal Permeability Test (Bureau of Land Reclamation~~
24 ~~and Earth Manual), and Slug Test Method (Groundwater Hydraulics, United States Geological~~
25 ~~Survey). Alternate test methods may be used subject to prior approval by the excavation~~
26 ~~administrator. Results of testing and impact analysis using the data generated must be certified~~
27 ~~by an engineer or geologist registered by the State of Florida. Results shall be submitted with~~
28 ~~the application.~~
- 29 ~~(c) In no case shall the excavation be allowed deeper than two (2) feet above the confining layer as~~
30 ~~determined and certified by an engineer or geologist. Soil borings shall be conducted on any~~
31 ~~site where an excavation is proposed with a depth greater than twelve (12) feet.~~
- 32 ~~(1) There shall be a minimum of two (2) borings per excavation. Additional borings shall occur~~
33 ~~at every one (1) foot of elevation change within each excavation cell or area. Locations of~~
34 ~~the test borings are based upon site specific conditions. If wetlands exist on-site, a~~
35 ~~minimum of two (2) borings per wetland are required, with one (1) located at the edge of~~
36 ~~the wetland and the second a distance of twenty-five (25) feet away.~~
- 37 ~~(2) Soil borings shall extend ten (10) feet deeper than the proposed depth of the excavation~~
38 ~~cell or area.~~
- 39 ~~(3) All borings results shall provide an explanation of the nature and depth of the overburden,~~
40 ~~the likely yield of extractive material, the complete chemical characteristics of water in each~~
41 ~~water-bearing strata to be penetrated, groundwater levels, and a map contouring the first~~
42 ~~confining layer below the depth of excavation and thickness of the layer within the project~~
43 ~~site as well as the thickness and contouring of all intermediate confining layers between~~
44 ~~the land surface and depth of excavation.~~
- 45 ~~(4) Copies of results shall be signed and sealed by an engineer or geologist.~~

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

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

8 ~~(e) The standard slope, for all groups except group IV, for the side of an excavation shall be no~~
9 ~~steeper than one (1) foot vertical drop for each six (6) feet of horizontal distance measured from~~
10 ~~the edge of the excavation at existing grade seasonal high water table to a depth of no less than~~
11 ~~five (5) feet below the mean water table. The slope for group IV shall be no steeper than one (1)~~
12 ~~foot vertical drop for every four (4) feet of horizontal span. Below a depth of five (5) feet from the~~
13 ~~mean water table, the grade may not exceed a drop of two (2) feet horizontal to one (1) foot~~
14 ~~vertical for all groups. If the applicant desires a slope greater than the standard described~~
15 ~~above, then the applicant shall specify this in the application along with a justification for the~~
16 ~~deviation from the standard, according to the variance procedures set out in this article.~~

17 ~~(f) The excavation shall be operated in such a manner that dust emissions are minimized.~~
18 ~~Unpaved roads shall require regular watering or other treatments required by the county to~~
19 ~~minimize dust emissions. The excavation administrator may halt the excavation operation if, in~~
20 ~~the determination of the excavation administrator, dust emissions constitute a public nuisance.~~

21 ~~(g) Burning or incineration associated with an excavation will require permits in accordance with~~
22 ~~Charlotte County law and applicable federal and state law.~~

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

27 ~~(i) Excavation activity shall be conducted between the hours of 7:00 a.m. and 6:00 p.m. on~~
28 ~~Monday through Friday and between the hours of 7:00 a.m. and 12:00 p.m. on Saturday, unless~~
29 ~~otherwise approved by the hearing examiner.~~

30 ~~(j) No excavation, except for ditches permitted by the applicable water management district, is~~
31 ~~permitted within twenty-five (25) feet of the boundary line of a drainage or utility easement. A~~
32 ~~waiver may be granted with the consent of the easement holder.~~

33 ~~(k) It shall be unlawful to place any litter (as defined in section 1-12-4 of this Code), solid materials,~~
34 ~~organic materials, or solid or hazardous waste (as defined in section 17-701.200 (73), Florida~~
35 ~~Administrative Code [F.A.C.]) within any excavation that has not been previously permitted as a~~
36 ~~solid waste disposal site by the State of Florida and Charlotte County. Clean gravel, sand, rock,~~
37 ~~clay and clean debris (as defined in section 17-701.200 (11), F.A.C.) may be placed within an~~
38 ~~excavation site pursuant to a valid and current reclamation plan approved by Charlotte County,~~
39 ~~provided a quarterly report is provided to the Charlotte County Department of Environmental~~
40 ~~Services listing the type, tonnage and origin of the fill. Any person with any property interest in~~
41 ~~the excavation location shall be responsible for any violation of this subparagraph. Any person~~
42 ~~doing the actual depositing of the materials within the excavation shall also be responsible for~~
43 ~~any violation of these provisions.~~

44 ~~(l) The permittee shall comply with all applicable requirements of article I, chapter 3-3, of this~~
45 ~~Code.~~

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

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1 ~~(n) The excavation administrator may require the applicant to utilize aesthetic features to enhance~~
2 ~~the site such as fences, landscaped screening buffers or earthen berms.~~

3 ~~(o) For the permit duration, the excavation administrator where appropriate and in the interest of~~
4 ~~public safety may require the applicant to secure the excavation. The excavation may be~~
5 ~~secured with a fence around the excavated area, by ensuring all access points to the~~
6 ~~excavation site be secured when no activity is occurring to prevent unauthorized access, or by~~
7 ~~such other means as agreed to by the excavation administrator and the applicant.~~

8 ~~(p) Applicants engaged in off-site transport of excavated material shall provide for an inspection~~
9 ~~area proximate to the excavation site egress point and provide access to FDOT and other law~~
10 ~~enforcement personnel granting on-site inspection authority during, and up to one-half (½) hour~~
11 ~~before and after, operating hours.~~

12 **Sec. 3-5-477. Group I location and operation standards.**

13 ~~In addition to the general location and operation standards set forth in this article, the following~~
14 ~~location and operation standards shall apply to group I excavations:~~

15 ~~(a) Group I excavations are permissible in any zoning district.~~

16 ~~(b) The term of a group I permit shall not exceed two (2) years.~~

17 ~~(c) No excavation, except for ditches permitted by the applicable water management district, is~~
18 ~~permitted within:~~

19 ~~(1) Fifty (50) feet of any public or private right-of-way.~~

20 ~~(2) Fifty (50) feet of any side or rear property line of abutting property located in areas zoned~~
21 ~~other than residential.~~

22 ~~(3) One hundred fifty (150) feet of residential or institutional structures.~~

23 ~~(4) Twenty five (25) feet of any side or rear property line of abutting property located in areas~~
24 ~~zoned residential.~~

25 ~~(d) In no case shall a group I excavation exceed a depth of twenty (20) feet.~~

26 **Sec. 3-5-478. Group II location and operation standards.**

27 ~~In addition to the general location and operation standards set forth in this article, the following~~
28 ~~location and operation standards shall apply to group II excavations:~~

29 ~~(a) Group II excavations are permissible in any zoning district.~~

30 ~~(b) The term of a group II permit shall not exceed three (3) years.~~

31 ~~(c) No excavation, except for ditches permitted by the applicable water management district, is~~
32 ~~permitted within:~~

33 ~~(1) One hundred (100) feet of any public or private right-of-way.~~

34 ~~(2) Twenty five (25) feet of the side or rear property line of abutting property located in areas~~
35 ~~zoned other than residential.~~

36 ~~(3) One hundred fifty (150) feet of residential or institutional structures.~~

37 ~~(4) Seventy five (75) feet of any side or rear property line of abutting property located in areas~~
38 ~~zoned residential.~~

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1 ~~(d) The footprint of a group II excavation shall not exceed twenty-five (25) percent of the area of the~~
2 ~~site. A waiver from the footprint limitation may be approved by the hearing examiner only upon a~~
3 ~~showing that:~~

4 ~~(1) Adherence would conflict with applicable state or federal laws or regulations; or~~

5 ~~(2) Upon the recording of a final plat for the excavation site in accordance with article II of~~
6 ~~chapter 3-7 of this Code; or~~

7 ~~(3) The project has obtained final DRC approval for an activity other than one capable of~~
8 ~~receiving a final plat and the hearing examiner finds sufficient assurances that the~~
9 ~~excavation is in furtherance of a legitimate development activity other than commercial~~
10 ~~excavation and places appropriate conditions on the excavation approval to insure the~~
11 ~~underlying development will be completed.~~

12 **~~Sec. 3-5-479. Group III location and operation standards.~~**

13 ~~In addition to the general location and operation standards set forth in this article, the following~~
14 ~~location and operation standards shall apply to group III excavations:~~

15 ~~(a) Group III excavations are permissible only in an excavation and mining (EM) zoning district as~~
16 ~~defined in chapter 3-9 of this Code.~~

17 ~~(b) The term of a group III permit shall not exceed ten (10) years.~~

18 ~~(c) No excavation, except for ditches permitted by the applicable water management district, is~~
19 ~~permitted within:~~

20 ~~(1) One hundred (100) feet of any public or private right-of-way.~~

21 ~~(2) Twenty-five (25) feet of the side or rear property line of abutting property located in areas~~
22 ~~zoned other than residential.~~

23 ~~(3) One thousand (1000) feet of residential or institutional structures.~~

24 ~~(A) A waiver from this setback may be permitted by the hearing examiner upon a showing~~
25 ~~that the occupants of the affected structures consent to a reduced setback.~~

26 ~~(4) Seventy-five (75) feet of any side or rear property line of abutting property located in areas~~
27 ~~zoned residential.~~

28 ~~(d) All loads of material leaving the excavation site must be weighed on-site by FDOT approved~~
29 ~~scales and each driver given a weight ticket for the correct weight of the load.~~

30 **~~Sec. 3-5-480. Group IV location and operation standards.~~**

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

33 ~~(a) Group IV excavations are permissible only in agriculture Zoning Districts (AE and AG) as~~
34 ~~defined in chapter 3-9 of this Code.~~

35 ~~(b) The term of a group IV permit shall not exceed five (5) years. Prior to expiration, the permit~~
36 ~~holder may request a one-time two-year extension from the excavation administrator upon a~~
37 ~~showing of good cause and continued participation in a qualified agricultural program without~~
38 ~~having to comply with the procedures of section 3-5-454 of this Code.~~

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1 ~~(c) No excavation, except for ditches permitted by the applicable water management district, is~~
2 ~~permitted within:~~

3 ~~(1) One hundred (100) feet of any public or private right-of-way.~~

4 ~~(2) Twenty-five (25) feet of the side or rear property line of abutting property located in areas~~
5 ~~zoned other than residential.~~

6 ~~(3) One hundred fifty (150) feet of residential or institutional structures.~~

7 ~~(4) Seventy-five (75) feet of any side or rear property line of abutting property located in areas~~
8 ~~zoned residential.~~

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

12 ~~(d) A small scale group IV excavation is one that has an excavation area size between ten (10) and~~
13 ~~twenty (20) acres. In no case shall the excavation area exceed ten (10) percent of the irrigated~~
14 ~~acreage.~~

15 ~~(e) A large scale group IV excavation is one that has an excavation area size between twenty (20)~~
16 ~~and one hundred (100) acres. In no case shall the excavation area exceed ten (10) percent of~~
17 ~~the irrigated acreage.~~

18 ~~(f) All excavated material shall remain onsite. Removal of material is prohibited.~~

19 **~~Sec. 3-5-481. Haul route; mitigation for roadway service life reduction.~~**

20 ~~(a) The excavation administrator shall review the proposed haul route(s), according to the following~~
21 ~~criteria and considerations:~~

22 ~~(1) To the greatest extent possible, the haul route(s) shall abut or lie within the excavation site.~~

23 ~~(2) The haul route(s) shall not have undue impact on persons and properties along or in proximity~~
24 ~~to the haul route(s).~~

25 ~~(3) It shall be the responsibility of the permittee to mitigate those impacts on the haul route(s)~~
26 ~~arising from activities authorized under the permit. Required mitigation measures shall be~~
27 ~~determined by the excavation administrator on a case-by-case basis, in recognition of the~~
28 ~~varying circumstances found in each application and may include any or all of the following:~~

29 ~~(A) Watering and other dust control measures.~~

30 ~~(B) Cleanup of materials overspills.~~

31 ~~(C) Maintenance grading of unsurfaced roads; shoulder grading and restoration.~~

32 ~~(D) Pavement patching.~~

33 ~~(E) Pavement maintenance, including resurfacing.~~

34 ~~(F) Pavement reconstruction.~~

35 ~~(G) Traffic safety improvements such as signing, striping, barrier rails, turn and/or acceleration~~
36 ~~lanes with tapers, all meeting American Association of State Highway and Transportation~~
37 ~~Officials' Standards.~~

38 ~~(b) The excavation administrator shall obtain the assistance of the county engineer relative to traffic~~
39 ~~safety, pavement conditions, and other technical aspects of the review of the proposed haul route(s).~~

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1 Subsequent to the review, the excavation administrator shall recommend that the haul route(s) be
2 approved or disapproved.

3 ~~(c) Applicants proposing to haul ten thousand (10,000) or more cubic yards of material on any road~~
4 ~~under county jurisdiction shall meet with the county engineer to discuss the proposed haul route(s)~~
5 ~~and associated traffic and pavement impacts. The applicant must provide a traffic analysis and/or~~
6 ~~pavement analysis. The county engineer shall determine the sufficiency and specify the necessary~~
7 ~~scope(s) thereof. A permit shall not be issued until said analysis(es) is approved by the county~~
8 ~~engineer, and the provisions of the permit include explicit measures for mitigation of said impacts.~~

9 ~~(1) A traffic impact analysis shall address the trip generation of the proposed facility; ingress,~~
10 ~~egress, and access control to the site; and will address the impact(s) direct, indirect and~~
11 ~~cumulative of the proposed facility, including anticipated increases in road maintenance~~
12 ~~requirements, and impacts to the levels of service of affected roadways.~~

13 ~~(d) No permit may be issued for an excavation which proposes to utilize, as part of a haul route(s), roads~~
14 ~~which are not publicly maintained, unless approval is obtained from each party responsible for~~
15 ~~maintenance of such roads. Any haul route(s), which contains unpaved segments, shall be~~
16 ~~maintained by the permittee in a condition satisfactory to the county, including controlling dust~~
17 ~~generated by the trucks engaged in earthmoving within five hundred (500) feet of any residential~~
18 ~~structure. Traffic control signs shall be provided where necessary, including but not limited to, stop,~~
19 ~~traffic, and entrances, which shall comply with the Manual of Uniform Traffic Control Devices.~~

20 ~~(e) Roadway service life, reduction due to earthmoving shall be mitigated on certain roads along the~~
21 ~~haul route(s), regardless of whether the origin of the material being hauled is within or without~~
22 ~~Charlotte County.~~

23 ~~(f) Mitigation is required for any damage caused by the permittee on county-maintained roads. A RSLR~~
24 ~~fee shall be calculated pursuant to the fee resolution.~~

25 **Sec. 3-5-482. Permit application contents.**

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

29 (a) All permit applications shall include:

30 (1) A completed application form and application fee;

31 (2) A copy of the soil boring report for excavations greater than twelve (12) feet deep. If the
32 depth of the excavation is twelve (12) feet or less, then no soil borings are required.

33 (3) Five (5) copies, signed and sealed by an engineer, of the proposed reclamation plan, when
34 required. The proposed reclamation plan shall be prepared in accordance with this article.
35 If sheet sizes are larger than eleven (11) inches by seventeen (17), applicant shall furnish
36 county with one (1) complete copy that has been reduced to eleven (11) by seventeen (17)
37 inches;

38 (4) Five (5) copies of the site plan, signed and sealed by an engineer, showing the plan view
39 and cross-section of the excavation project, along with the following supplemental
40 information:

41 (A) The ownership and boundary lines of the property, including bearings and distances;

42 (B) A topographic survey clearly showing existing and proposed grades, all of which shall
43 be related to the National Geodetic Vertical Datum (NGVD);

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- ~~(C) Existing natural and manmade features including but not limited to, watercourses, wetlands, vegetative communities identified to FLUCCS level 4, a listed species survey, streets, utility lines, wells, septic tanks, drainfields, chemical/fuel storage tanks (surface and subsurface) existing buildings and other physical features within one hundred fifty (150) feet of the perimeter of the proposed excavation area. If blasting is proposed, this information shall be provided for an area within one-half (1/2) mile of the perimeter of the proposed excavation;~~
- ~~(D) The location of soil borings shown in the soil boring report;~~
- ~~(E) Size, shape, depth, and location of the proposed excavation including recharge trenches and settling ponds;~~
- ~~(F) Right-of-way lines and easement lines;~~
- ~~(G) Distance of the proposed excavation from right-of-way lines, easement lines and property lines;~~
- ~~(H) Points of access to the proposed excavation;~~
- ~~(I) North arrow, date and scale;~~
- ~~(J) Scale of reasonable size depending upon the size of the site as specified by the excavation administrator;~~
- ~~(K) Proposed slopes. A cross-sectional drawing referring to NGVD showing the proposed depth of the excavation area and the slope of the side and depth of the water;~~
- ~~(L) Proposed method of de-watering and use of settling ponds. Settling ponds must store twenty-four (24) hours of continuous pump discharge;~~
- ~~(M) All potable water wells or lakes within a radius of five hundred (500) feet of the proposed excavation;~~
- ~~(N) Proposed haul route(s), including alternative routes, and location of asphalt aprons. Information relating to the proposed haul route(s) must include the condition of the road, i.e. paved, width, etc.; a description of the trucks to be used, i.e. weight of trucks, number of axles; and a description of any adverse impacts the haul route(s) could have, e.g., noise or dust levels;~~
- ~~(O) Clear line of sight distances at all intersections;~~
- ~~(P) A description of all activity that will be conducted on-site;~~
- ~~(Q) Phasing of the excavation, and other on-site operations and reclamation, including a time schedule for clearing, excavating, reclamation and proposed hours and days of operation;~~
- ~~(R) A time schedule for phasing of the reclamation;~~
- ~~(S) Dust control and suppression methods;~~
- ~~(T) Detailed erosion control methods such as turbidity screens and/or hay bales, seeding and mulching, and sodding;~~
- ~~(U) An environmental impact statement as described in this article except that the excavation administrator may grant a variance for certain requirements set forth in this article for excavations not exceeding five (5) acres in surface area;~~
- ~~(V) The location and preservation plan for all proximate wetland areas to be preserved;~~

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1 ~~(W) The technique(s), which will be used to vegetate littoral zone, if littoral zones are to be~~
2 ~~included in the excavation;~~

3 ~~(X) A discussion of quality of life issues, in particular, the affect of the proposed~~
4 ~~excavation upon the health, safety and welfare of residents within one-half (1/2) mile~~
5 ~~(two thousand six hundred forty (2,640) feet) of the site;~~

6 ~~(Y) A statement as to the extent blasting is planned and the expected impact on the area,~~
7 ~~i.e., dust, wind, noise, vibrations, etc.~~

8 ~~(Z) A statement as to the extent rock crushing is planned and expected impact on the~~
9 ~~area, i.e., dust, noise, vibrations, etc.~~

10 ~~(AA) Aerial photos of the excavation site;~~

11 ~~(BB) Copies of all information, documents, and reports for state permit acquisition and~~
12 ~~monitoring;~~

13 ~~(CC) A reclamation plan as provided in this article;~~

14 ~~(DD) A detailed description of any required on-site FDOT inspection areas, delineating both~~
15 ~~their location and access route(s);~~

16 ~~(EE) Indicate and detail the location of all proposed spoil piles and stockpiles of excavated~~
17 ~~material on site;~~

18 ~~(FF) Provide an excavation site location map with the location of all known well fields and~~
19 ~~well field protection zones within a five-mile radius superimposed;~~

20 ~~(GG) The location of all monitoring and test wells required on the site;~~

21 ~~(HH) The location of all staff gauges required on site;~~

22 ~~(II) Any other specific information requested by the excavation administrator to better~~
23 ~~define, clarify, or assist the excavation administrator in evaluating whether or not the~~
24 ~~application is consistent with the intent and purposes of this article, in light of the~~
25 ~~uniqueness or complexity of the proposed excavation project.~~

26 ~~(b) If sheet sizes of any application materials are larger than eleven (11) by seventeen (17) inches,~~
27 ~~applicant shall furnish county with one (1) complete copy that has been reduced to eleven (11)~~
28 ~~by seventeen (17) inches.~~

29 ~~(c) The county will accept an approved permit from a state agency, if the applicant chooses to use~~
30 ~~that information to prove that the operation will meet the standards of this code.~~

31 **Sec. 3-5-483. Reclamation plan.**

32 ~~(a) A reclamation plan shall be submitted with an application and shall:~~

33 ~~(1) Provide for reclamation on a periodic basis. The excavation administrator shall determine the~~
34 ~~stages or intervals at which the various stages of reclamation must be commenced and~~
35 ~~completed.~~

36 ~~(2) Describe the manner in which restructuring, reshaping and/or revegetation will be~~
37 ~~accomplished, and show final grades of the site.~~

38 ~~(3) Be drawn to a reasonable scale depending upon the size of the project as specified by the~~
39 ~~excavation administrator and contain a north arrow.~~

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- 1 ~~(4) Show existing natural and manmade features, including watercourses, water bodies, wetlands,~~
2 ~~general vegetative communities and concentrations, streets, utility lines, wells, septic tanks,~~
3 ~~drain fields, chemical/fuel storage tanks (surface and subsurface), easements and similar~~
4 ~~physical characteristics of the site.~~
- 5 ~~(5) Show all areas to be reclaimed by depicting and/or describing what manmade and natural~~
6 ~~features will exist when the reclamation plan is completed. This requirement includes the~~
7 ~~depiction of mitigation or preservation areas established for wildlife species.~~
- 8 ~~(6) Depict at least two (2) typical cross-sections with elevations, generally oriented north to south~~
9 ~~and east to west, showing areas to be filled, back-filled, reconstructed and/or reshaped. Water~~
10 ~~elevations shall also be shown.~~
- 11 ~~(7) Depict any area to become a lake.~~
- 12 ~~(8) Depict any required fences, walls, or vegetative buffers, including at least one cross-section, in~~
13 ~~addition:~~
 - 14 ~~(A) Document the type and location of vegetation to be preserved or planted including, but not~~
15 ~~limited to, grass(es), tree(s) and shrubs; and~~
 - 16 ~~(B) Depict the required vegetative buffer required along the perimeter of any group III~~
17 ~~excavated lake, and any large scale group IV excavated lake that ceases to be utilized for~~
18 ~~agricultural irrigation for more than one (1) year or immediately upon change of use. Such~~
19 ~~buffer shall utilize the following standards:~~
 - 20 ~~i) Required plant units/100 feet (Per perimeter of the reclaimed lake) shall be three (3)~~
21 ~~canopy trees, one (1) accent/understory trees and five (5) shrubs.~~
 - 22 ~~ii) The buffer shall be minimum width of twenty (20) feet.~~
 - 23 ~~iii) Trees for use within the buffer include:~~

| | | |
|--------------------------------|--------------------------------------|-----------------------|
| Bald Cypress | Taxodium distichum | Canopy |
| Gumbo Limbo | Bursera simaruba | Canopy |
| Laurel Oak | Quercus laurifolia | Canopy |
| Live Oak | Quercus virginiana | Canopy |
| Sabal Palm | Sabal palmetto | Canopy |
| Sea Grape | Coccoloba uvifera | Canopy |
| Southern Slash Pine | Pinus elliotii var. densa | Canopy |
| Florida Privet | Forestiera segregate | Understory |
| Red Cedar | Juniperus virginiana | Understory |

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| | | |
|------------------------------|---|-----------------------|
| Silver Buttonwood | Conocarpus erectus var. sericeus | Understory |
| Simpson's Stopper | Myrcianthes fragrans | Understory |
| Stoppers | Eugenia spp. (natives only) | Understory |
| Wax Myrtle | Myrica cerifera | Understory |
| Wild Coffee | Psychotria undata | Understory |

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~~iv) — Shrubs for use within the buffer include:~~

| | |
|-------------------------------|-------------------------------------|
| Beautyberry | Callicarpa americana |
| Eastern Gammagrass | Tripsacum dactyloides |
| Fakahatchee Grass | Tripsacum dactyloides |
| Firebush | Hamelia patens |
| Firecracker Plant | Russelia equisetiformis |
| Florida Privet | Forestiera segregate |
| Saw Palmetto | Serenoa repens |
| Simpson's Stoppers | Myrcianthes fragrans |
| Wax Myrtle | Myrica cerifera and cvs. |

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6

~~v) — Landscape plans shall be designed, signed and sealed by a Florida Registered Landscape Architect in accordance with Charlotte County Code, Section 3-5, Article XVIII.~~

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- ~~vi) Existing native vegetation may be preserved in order to meet the buffer requirements; however, in no case shall there be a separation of greater than fifty (50) feet between trees. Supplemental material shall be planted in order to alleviate such circumstances.~~
- ~~vii) Other indigenous species which may be approved by the county.~~
- ~~viii) All planted material shall be Florida #1 grade according to Florida Department of Agriculture and Consumer Services, Grades and Standards; trees shall be minimum three-gallon size; shrubs shall be minimum one (1) gallon size, and minimum height of eighteen (18) inches.~~
- ~~ix) Clustering of vegetation may be allowed on a case-by-case basis. Such approval will supersede (B), ii) and iv) of this subsection.~~

~~(9) Document the methods necessary to control erosion.~~

~~(10) Indicate that all spoil piles and stockpiles of material shall be removed from the site or incorporated into the reclamation plan when the excavation is complete.~~

~~(b) In the event that partial reclamation shall not be substantially completed or significant progress not be made within the required time periods, the county may draw upon the reclamation performance assurance and conduct the partial reclamation.~~

Sec. 3-5-484. Environmental impact statement.

~~(a) An environmental impact statement or "EIS" shall be submitted with each application.~~

~~(b) An EIS shall be prepared by an individual or firm whom the excavation administrator deems qualified in the various disciplines involved in an EIS.~~

~~(c) The contents of the EIS shall be consistent with the EIS definition set forth in this article. At a minimum, the EIS shall address the direct, indirect and cumulative impacts that the proposed excavation will have on the following:~~

~~(1) Surface water resources, including stacking of water (including sheet flow) up gradient of the subject property, with particular attention paid to the effects of berms or other water control structures; loss of sheet flow or other surface flows down gradient of the subject property; any reductions in flows to creeks, streams, rivers, or other natural surface waters; and the quality of any off-site surface water discharges which may occur under any conditions up to and including a 100-year storm event.~~

~~(2) Ground water resources, including the dimensions of land areas that will experience lowering of groundwater levels due to dewatering or other aspects of the excavation; an analysis of any impacts to the base flow of surface waters within the subject surface water drainage basin; an analysis of any impacts to ground water resulting from increased evaporation from lakes and other post-mining landforms resulting from the excavation.~~

~~(3) Vegetation and wildlife, including a map of all land covers and forms on the subject property depicted according to FLUCCS category level 4 at scale of one (1) inch equals two hundred (200) feet (unless a different scale is approved in writing and in advance by the excavation administrator as appropriate to the specific site); a narrative description of the direct, indirect and cumulative impacts to on-site natural communities which will be affected during mining and reclamation; a listed species survey conducted by a qualified environmental professional; and a discussion of impacts to, and mitigation proposed for, wildlife species which reside on or utilize the excavation site, particularly those listed by the U.S. Fish and Wildlife Service or Florida Fish and Wildlife Conservation Commission as endangered, threatened, or of special concern.~~

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1 ~~(4) Air quality, including dust from any excavation, blasting, stockpiling, sorting, vehicular~~
2 ~~circulation, or other activity; any exhaust or other emissions from equipment associated with the~~
3 ~~excavation.~~

4 ~~(5) Hazardous materials and other potential contaminants, including any naturally occurring~~
5 ~~elements which could become potentially harmful to the public if concentrated by any process~~
6 ~~associated with the proposed excavation, including but not limited to dewatering, settling,~~
7 ~~stockpiling, sorting, and other activities, with particular attention to radiation.~~

8 ~~(6) Qualifications and calculations, including all calculations, assumptions, survey methodologies,~~
9 ~~and other technical components of the statement; the qualifications of every person involved in~~
10 ~~preparing the statement, and which portion(s) they were involved in.~~

11 ~~(7) Any other information required by the excavation administrator due to unique circumstances.~~

12 **~~Sec. 3-5-485. Group I permitting process.~~**

13 ~~(a) Applicants shall submit a completed group I application form to the community development~~
14 ~~department together with all supporting documentation.~~

15 ~~(b) The excavation administrator shall have five (5) working days to review the application for~~
16 ~~completeness and to notify the applicant, in writing, of any deficiencies. If the excavation~~
17 ~~administrator deems the application to be incomplete or otherwise deficient, all review of the~~
18 ~~application shall cease until such time as the application is supplemented by the applicant and~~
19 ~~deemed complete by the excavation administrator.~~

20 ~~(c) Within five (5) working days of the determination that the application is complete, the excavation~~
21 ~~administrator shall forward one (1) copy of the application to the applicable county departments for~~
22 ~~their review in regard to compliance with this article, other applicable laws and sound engineering~~
23 ~~and planning practices.~~

24 ~~(d) Within fifteen (15) working days of receipt of the complete application, said departments/divisions~~
25 ~~shall conduct their reviews and provide the excavation administrator with reports containing their~~
26 ~~comments and recommendations concerning the contents of the application, whether it should be~~
27 ~~approved or not approved as submitted and specific permit conditions deemed necessary to comply~~
28 ~~with the provisions of this article and other applicable law.~~

29 ~~(e) Upon receipt of the aforementioned reports, the excavation administrator shall carry out the following~~
30 ~~procedures in respect to the application:~~

31 ~~(1) The excavation administrator shall prepare a master report of the departmental reviews and the~~
32 ~~applicant shall be notified of the excavation administrator's decision to approve or disapprove~~
33 ~~the application within seven (7) working days.~~

34 ~~(2) In the event the excavation administrator approves the application, the applicant shall submit a~~
35 ~~performance assurance for land reclamation prior to issuance of the permit. The performance~~
36 ~~assurance shall be calculated according to the procedures set forth in the fee resolution.~~

37 ~~(f) Upon the applicant's satisfaction of all applicable requirements, the group I permit shall be issued.~~
38 ~~The permit shall set forth all specific permit conditions.~~

39 ~~(g) The permit shall be posted at the excavation site throughout the term of the excavation.~~

40 ~~(h) In the event that the application is denied, the excavation administrator shall not issue a group I~~
41 ~~permit to the applicant. The applicant may supplement the application or work with the excavation~~
42 ~~administrator to correct any deficiencies.~~

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1 ~~(i) If an application for a group I permit is not approved within one (1) year of the date that it was~~
2 ~~submitted, the application shall be void and the applicant must submit a new application for the~~
3 ~~proposed group I permit. An extension may be granted by the excavation administrator, at his~~
4 ~~discretion, if the applicant can demonstrate that the delay was due primarily to the fault of other~~
5 ~~permitting agencies and not to any fault of the applicant.~~

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 community development department~~
9 ~~together with all supporting documentation.~~

10 ~~(2) The excavation administrator shall forward copies of the application to the applicable county~~
11 ~~departments for review. The departments shall employ sound scientific, engineering and~~
12 ~~planning practices to determine if the proposed excavation meets the requirements of the~~
13 ~~preliminary application process.~~

14 ~~(3) The applicant shall be responsible for providing the county with all information necessary for the~~
15 ~~preliminary application process. In the event that the excavation administrator or the~~
16 ~~departments deem the application, the supporting documentation or any portion thereof to be~~
17 ~~insufficient, the excavation administrator shall provide the applicant with written notice or notices~~
18 ~~of such insufficiencies as soon as practicable. The failure of the excavation administrator to~~
19 ~~mention any insufficiencies in any notice shall not affect the county's right to require that the~~
20 ~~unstated insufficiencies be addressed by the applicant. The excavation administrator shall~~
21 ~~provide the applicant with written notice of further insufficiencies as soon as practicable.~~

22 ~~(A) The county, at its option, may cease all or any portion of the preliminary application~~
23 ~~process until such time as all insufficiencies are addressed to the county's satisfaction.~~

24 ~~(B) If the applicant refuses or is unable to address the insufficiencies to the county's~~
25 ~~satisfaction, the applicant may request and receive a preliminary hearing on the application~~
26 ~~as presented.~~

27 ~~(4) Within fifteen (15) working days after receiving all information necessary for the preliminary~~
28 ~~application process, the departments shall complete their review and provide the excavation~~
29 ~~administrator with a report containing its comments and recommendations as to the proposed~~
30 ~~excavation's compliance with the requirements of the preliminary application process.~~

31 ~~(5) The excavation administrator shall provide the applicant with a master report or a summary~~
32 ~~thereof within fifteen (15) working days of the excavation administrator's receipt of the~~
33 ~~departmental reports.~~

34 ~~(6) If the excavation administrator determines that the excavation meets the requirements of the~~
35 ~~preliminary application process, the excavation administrator shall schedule a preliminary~~
36 ~~hearing on the application.~~

37 ~~(7) Upon the applicant's receipt of a master report or summary thereof wherein excavation~~
38 ~~administrator concludes that the excavation does not meet the requirements of the preliminary~~
39 ~~application process, the applicant may choose to provide additional information to the~~
40 ~~excavation administrator or to proceed with the preliminary hearing. In the latter event, the~~
41 ~~applicant must provide the excavation administrator with a written request for a preliminary~~
42 ~~hearing. A preliminary hearing will not be scheduled until such time as the excavation~~
43 ~~administrator determines that the preliminary final application process requirements have been~~
44 ~~met or the applicant provides the excavation administrator with a written request for a~~
45 ~~preliminary hearing.~~

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1 ~~(8) If the hearing examiner determines that the application does not meet the requirements of the~~
2 ~~preliminary application process, the applicant may submit additional information and re-initiate~~
3 ~~the preliminary application process one (1) time without paying an additional application fee.~~

4 ~~(9) If the hearing examiner determines that an application meets the requirements of the~~
5 ~~preliminary application process, the applicant shall have the right to proceed with the final~~
6 ~~application process. A favorable ruling by the hearing examiner constitutes a conditional~~
7 ~~approval of the application, subject only to the applicant's compliance with the balance of the~~
8 ~~requirements of this article and other applicable law necessary for the issuance of the permit.~~

9 ~~(b) Final application process.~~

10 ~~(1) It shall be the responsibility of the applicant to notify the excavation administrator in writing~~
11 ~~when the applicant is ready to proceed with the final application process. For purposes of the~~
12 ~~final application process, the excavation administrator shall not deem an application complete~~
13 ~~until all requirements of this article and other applicable law have been met and all~~
14 ~~documentation required by applicable law have been received by the excavation administrator.~~

15 ~~(2) The applicant shall be responsible for providing the county with all information necessary for the~~
16 ~~final application process. In the event that the excavation administrator or the departments~~
17 ~~deem the application, the supporting documentation or any portion thereof to be insufficient, the~~
18 ~~excavation administrator shall provide the applicant with written notice or notices of such~~
19 ~~insufficiencies as soon as practicable. The failure of the excavation administrator to mention any~~
20 ~~insufficiencies in any notice shall not affect the county's right to require that the unstated~~
21 ~~insufficiencies be addressed by the applicant. The excavation administrator shall provide the~~
22 ~~applicant with written notice of further insufficiencies as soon as practicable.~~

23 ~~(A) The county, at its option, may cease all or any portion of the final application process until~~
24 ~~such time as all insufficiencies are addressed to the county's satisfaction.~~

25 ~~(B) If the applicant refuses or is unable to address the insufficiencies to the county's~~
26 ~~satisfaction, the applicant may request and receive a final hearing on the application as~~
27 ~~presented.~~

28 ~~(3) Within fifteen (15) working days after receiving all information necessary for the final application~~
29 ~~process, the departments shall complete their review and provide the excavation administrator~~
30 ~~with a report containing comments and recommendations as to whether the proposed~~
31 ~~excavation meets the requirements of the final application process.~~

32 ~~(4) The excavation administrator shall provide the applicant with a master report or a summary~~
33 ~~thereof within fifteen (15) working days of the excavation administrator's receipt of the~~
34 ~~departmental reports.~~

35 ~~(5) If the excavation administrator determines that the excavation meets the requirements of the~~
36 ~~final application process, the excavation administrator shall schedule a final hearing on the~~
37 ~~application.~~

38 ~~(6) If the excavation administrator determines that the excavation does not meet the requirements~~
39 ~~of the final application process, the applicant may choose to provide additional information to~~
40 ~~the excavation administrator or to proceed with the final hearing. In the latter event, the~~
41 ~~applicant must provide the excavation administrator with a written request for a final hearing. A~~
42 ~~final hearing will not be scheduled until such time as the excavation administrator determines~~
43 ~~that the final application process requirements have been met or the applicant provides the~~
44 ~~excavation administrator with a written request for a final hearing.~~

45 ~~(7) In the event that the hearing examiner determines that an application does not meet the~~
46 ~~requirements of the final application process, the excavation administrator shall not issue a~~

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1 permit to the applicant. The applicant may seek a review of the hearing examiner's decision by
2 filing a writ of certiorari in the circuit court.

3 ~~(8) In the event that the hearing examiner determines that an application meets the requirements of~~
4 ~~the final application process, the permit shall be issued upon the applicant's satisfaction of all~~
5 ~~requirements set forth in this article.~~

6 ~~(9) Issuance of the permit shall be contingent upon the applicant providing the following:~~

7 ~~(A) A performance assurance for land reclamation. Subject to the provisions of subsection 3-5-~~
8 ~~486(b)(9)(B) below, the land reclamation performance assurance shall remain in effect~~
9 ~~throughout the duration of the permit term, plus six (6) months.~~

10 ~~(B) A performance assurance for land reclamation may expire prior to the duration of the~~
11 ~~permit term plus six (6) months provided the county is given a successor performance~~
12 ~~assurance in conjunction with the annual report and as-built certification. In such event, the~~
13 ~~effective date of each successor performance assurance shall thereafter fall on January 1~~
14 ~~and the expiration date of each successor performance assurance shall thereafter fall on~~
15 ~~December 31.~~

16 ~~(C) A roadway service life reduction fee shall be provided in an amount per truckload of~~
17 ~~excavated material to leave the site as set forth in the annual operations report as provided~~
18 ~~for by the provisions of this article to assure the maintenance of all public roads utilized.~~

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

24 ~~(11) Upon receipt, review, and approval of the aforementioned performance assurances, executed~~
25 ~~developer's agreement and all other requirements set forth herein or otherwise applicable to the~~
26 ~~prospective permit, a permit shall be issued. Group II and III permits shall set forth all specific~~
27 ~~permit conditions.~~

28 ~~(12) The permit must be conspicuously posted at the excavation site throughout the term of the~~
29 ~~excavation.~~

30 ~~(13) If an application for a group II or a group III permit is not approved within two (2) years of the~~
31 ~~date that it was first submitted, the application shall be void and the applicant must submit a~~
32 ~~new application for the proposed group II or a group III permit. An extension may be granted by~~
33 ~~the excavation administrator, at his discretion, if the applicant can demonstrate that the delay~~
34 ~~was due solely to the fault of other permitting agencies and not to any fault of the applicant.~~

35 **Sec. 3-5-487. Group IV permitting processes.**

36 ~~(a) Small scale permit process.~~

37 ~~(1) Applicants shall submit a completed group IV application to the community development~~
38 ~~department together with all supporting documentation.~~

39 ~~(2) The excavation administrator shall have five (5) working days to review the application for~~
40 ~~completeness and to notify the applicant, in writing, of any deficiencies. If the excavation~~
41 ~~administrator deems the application to be incomplete or otherwise deficient, all review of the~~
42 ~~application shall cease until such time as the application is supplemented by the applicant and~~
43 ~~deemed complete by the excavation administrator.~~

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

5 ~~(4) Within fifteen (15) working days of receipt of the complete application, said~~
6 ~~departments/divisions shall conduct their reviews and provide the excavation administrator with~~
7 ~~reports containing their comments and recommendations concerning the contents of the~~
8 ~~application, whether it should be approved or not approved as submitted and specific permit~~
9 ~~conditions deemed necessary to comply with the provisions of this article and other applicable~~
10 ~~law.~~

11 ~~(5) Upon receipt of the aforementioned reports, the excavation administrator shall review the~~
12 ~~departmental reports and the applicant shall be notified of the excavation administrator's~~
13 ~~decision to approve or disapprove the application within seven (7) working days.~~

14 ~~In the event the excavation administrator approves the application, the applicant shall submit a~~
15 ~~performance assurance for land reclamation prior to issuance of the permit. The performance~~
16 ~~assurance shall be calculated according to the procedures set forth in the fee resolution.~~

17 ~~(6) Upon the applicant's satisfaction of all applicable requirements, the group IV permit shall be~~
18 ~~issued. The permit shall set forth all specific permit conditions.~~

19 ~~(7) The permit shall be posted at the excavation site throughout the term of the excavation.~~

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

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

30 ~~(b) Large-scale permit process.~~

31 ~~(1) Applicants shall submit a complete application to the community development department~~
32 ~~together with all supporting documentation. The excavation administrator shall not deem an~~
33 ~~application complete until all requirements of this article and other applicable law have been met~~
34 ~~and all documentation required by applicable law have been received by the excavation~~
35 ~~administrator.~~

36 ~~(2) The excavation administrator shall forward copies of the application to the applicable county~~
37 ~~departments for review. The departments shall employ sound scientific, engineering and~~
38 ~~planning practices to determine if the proposed excavation meets the requirements of this~~
39 ~~article.~~

40 ~~(3) The applicant shall be responsible for providing the county with all information necessary for the~~
41 ~~issuance of a permit. In the event that the excavation administrator or the departments deem~~
42 ~~the application, the supporting documentation or any portion thereof to be insufficient, the~~
43 ~~excavation administrator shall provide the applicant with written notice or notices of such~~
44 ~~insufficiencies as soon as practicable. The failure of the excavation administrator to mention any~~
45 ~~insufficiencies in any notice shall not affect the county's right to require that the unstated~~

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1 ~~insufficiencies be addressed by the applicant. The excavation administrator shall provide the~~
2 ~~applicant with written notice of further insufficiencies as soon as practicable.~~

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

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

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

12 ~~(5) The excavation administrator shall provide the applicant with a master report or a summary~~
13 ~~thereof within fifteen (15) working days of the excavation administrator's receipt of the~~
14 ~~departmental reports.~~

15 ~~(6) If the excavation administrator determines that the excavation meets the requirements of this~~
16 ~~article, the excavation administrator shall schedule a hearing on the application. The applicant~~
17 ~~may proceed to a hearing while other required permits are pending, however the application~~
18 ~~shall not be deemed complete and the excavation administrator shall not issue a permit under~~
19 ~~this article until all other requisite permits are have been received.~~

20 ~~(7) Upon the applicant's receipt of a master report or summary thereof wherein excavation~~
21 ~~administrator concludes that the excavation does not meet the requirements of this article, the~~
22 ~~applicant may choose to provide additional information to the excavation administrator or to~~
23 ~~proceed with the hearing. In the latter event, the applicant must provide the excavation~~
24 ~~administrator with a written request for a hearing. A hearing will not be scheduled until such time~~
25 ~~as the excavation administrator determines that the requirements of this article have been met~~
26 ~~or the applicant provides the excavation administrator with a written request for a hearing.~~

27 ~~(8) If the hearing examiner determines that the application does not meet the requirements of this,~~
28 ~~the applicant may submit additional information and reinitiate the permitting process under this~~
29 ~~subsection one (1) time without paying an additional application fee.~~

30 ~~(9) If the hearing examiner determines that an application meets the requirements of this article, the~~
31 ~~permit shall be issued contingent upon the applicant's satisfaction of all requirements set forth in~~
32 ~~this article. A favorable ruling by the hearing examiner constitutes a conditional approval of the~~
33 ~~application, subject only to the applicant's compliance with the balance of the requirements of~~
34 ~~this article and other applicable law necessary for the issuance of the permit.~~

35 ~~(10) In the event that the hearing examiner determines that an application does not meet the~~
36 ~~requirements of this article, the excavation administrator shall not issue a permit to the~~
37 ~~applicant. The applicant may seek a review of the hearing examiner's decision by filing a writ of~~
38 ~~certiorari in the circuit court.~~

39 ~~(11) The hearing examiner, in lieu of denial, may choose at the hearing to grant preliminary approval~~
40 ~~to the applicant if the hearing examiner determines that the remaining insufficiencies are readily~~
41 ~~addressable by the applicant and the applicant agrees to such appropriate conditions as the~~
42 ~~hearing examiner deems necessary to ensure consistency with this article. Preliminary approval~~
43 ~~represents only a general acceptance of the application as presented and shall not be~~
44 ~~construed to authorize issuance of a permit, instead said approval places appropriate conditions~~
45 ~~on the applicant to ensure compliance with the remainder of this article and other applicable law~~
46 ~~necessary for the issuance of the permit. Preliminary approval shall be valid for a period of six~~
47 ~~(6) months from the date of the hearing in which it was made or two (2) years from the date the~~

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~~application was submitted, whichever is greater, and upon expiration the application shall be void and the applicant will be required to submit a new application. Issuance of a permit, following preliminary approval by the hearing examiner, shall lie with, and shall not be unreasonably withheld by, the excavation administrator. The excavation administrator shall issue the permit upon a subsequent showing by the applicant that the application now complies with all the conditions placed on the applicant by the hearing examiner at the hearing in granting preliminary approval. Such conditions shall further be specified in the permit.~~

~~(12) Issuance of the permit shall be contingent upon the applicant providing the following:~~

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

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

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

~~(14) Upon receipt, review, and approval of the aforementioned performance assurances, executed developer's agreement and all other requirements set forth herein or otherwise applicable to the prospective permit, a permit shall be issued setting forth all specific permit conditions.~~

~~(15) The permit must be conspicuously posted at the excavation site throughout the term of the excavation.~~

~~(16) If an application for a group IV permit is not approved within two (2) years of the date that it was first submitted, the application shall be void and the applicant must submit a new application. An extension may be granted by the excavation administrator, at his discretion, if the applicant can demonstrate that the delay was due solely to the fault of other permitting agencies and not to any fault of the applicant.~~

~~**Sec. 3-5-488. Hearings.**~~

~~(a) Notice of all public hearings shall be given by publication in a newspaper of general circulation in the county at least fifteen (15) calendar days in advance of the hearing and by first class mail to all owners of property situated within two hundred (200) feet of the subject property and proposed haul route(s). The notice shall contain the time, date and place of the public hearing and a brief description of the property involved. Notice by mail shall be accomplished by depositing the notice in the United States mail and shall be addressed to each property owner at the addresses shown on the latest available property records in the property appraiser's office as provided by the applicant. In addition, a sign shall be posted conspicuously on the subject property. The sign shall contain the time, date, and place of the public hearing and shall state the action being considered. Said sign shall be placed on the subject property at least ten (10) calendar days prior to the public hearing.~~

~~(b) Hearings will be held on a weekday and public input shall be allowed. Both preliminary hearings and final hearings shall be quasi-judicial proceedings. If an unauthorized communication is made or attempted to be made, such communication shall be publicly disclosed, and placed in the public record.~~

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1 ~~(c) In addition to the excavation administrator or his/her designee, representatives from the county~~
2 ~~engineer and county departments, whose comments contributed to the master report shall be~~
3 ~~present at both preliminary and final hearings to answer both the applicant and hearing examiner's~~
4 ~~questions unless given express permission to be excused by the excavation administrator which~~
5 ~~shall not be granted over the objection of the applicant.~~

6 ~~(d) The hearing examiner shall consider the substantial competent evidence presented by the applicant,~~
7 ~~the applicant's agents and consultants, county staff and the public together in deciding if the~~
8 ~~application is consistent with this article. The applicant will make the initial presentation before the~~
9 ~~hearing examiner. The applicant has the burden of establishing that all requirements of this article~~
10 ~~have been met. The applicant's presentation will be followed by the county's presentation. The~~
11 ~~county shall state whether the requirements for approval of the application, whether in whole or in~~
12 ~~part, have been met, and its reasons therefor.~~

13 ~~(e) As soon as practicable after each hearing, the hearing examiner shall file a report and notify the~~
14 ~~applicant of his or her findings.~~

15 **Sec. 3-5-489. Variances.**

16 ~~(a) Variances to the provisions of this article shall be requested in the application. Variance requests for~~
17 ~~group I excavations shall be granted or denied by the excavation administrator in connection with the~~
18 ~~consideration of the application. Variance requests for group II, III and IV excavations shall be~~
19 ~~granted or denied by the hearing examiner in connection with the preliminary application process.~~

20 ~~(b) As a condition to any requested variance, the applicant must establish the following prerequisites to~~
21 ~~the satisfaction of the excavation administrator, in the case of a group I excavation and to the~~
22 ~~satisfaction of the hearing examiner, in the case of group II, III and IV excavations before the~~
23 ~~granting of a variance may be given:~~

24 ~~(1) That:~~

25 ~~(A) The variance requested is not contrary to the public interest or otherwise detrimental to the~~
26 ~~public welfare; and~~

27 ~~(B) Strict adherence to the provisions of this article would place an undue burden or hardship~~
28 ~~upon the excavation operation due to unique conditions of the excavation site and that~~
29 ~~hardship was not caused intentionally by the action of the applicant; and~~

30 ~~(C) The granting of a variance would not be injurious to or incompatible with contiguous uses~~
31 ~~or to the surrounding neighborhood; and~~

32 ~~(D) The hardship or conditions cannot reasonably be corrected or avoided by the applicant,~~
33 ~~there is no reasonable alternative and the requested variance is the minimum modification~~
34 ~~of the regulation at issue that will afford relief.~~

35 ~~(2) Or:~~

36 ~~(A) That strict adherence to the requirements of this article would violate state or federal laws~~
37 ~~and/or regulations.~~

38 ~~(c) The excavation administrator or hearing examiner may add such conditions as deemed necessary in~~
39 ~~connection with the granting of any variance under this section to minimize any harmful effects~~
40 ~~created as a result of the variance.~~

41 ~~(d) Any variance granted, along with any accompanying conditions, shall be incorporated into the permit~~
42 ~~as a specific condition thereof.~~

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~~1 **Sec. 3-5-490. Permit transfers and amendments.**~~

~~2 (a) If the permittee desires to transfer a permit, the prospective transferee shall be required to submit an
3 application for the transfer to the excavation administrator. The prospective transferee shall be
4 required to establish to the satisfaction of the excavation administrator that the excavation complies
5 with all requirements applicable to the original permit and any amendments thereto. The prospective
6 transferee shall also be required to pay all applicable fees, post the required performance
7 assurances and otherwise comply with the terms of the fee resolution and this article. Upon the
8 transfer of the permit, the permittee shall be bound by the terms of the permit and the development
9 agreement.~~

~~10 (b) A non-administrative permit amendment may only be obtained by submitting and obtaining the
11 approval of a new application. An administrative permit amendment shall be processed by the
12 excavation administrator without the need for a new application.~~

~~13 (c) If an application for a transfer or an amendment is not approved within one (1) year of the date that it
14 was submitted, the application shall be void and the Applicant must submit a new application for the
15 proposed transfer or amendment.~~

~~16 **Sec. 3-5-491. Annual report and as-built certification.**~~

~~17 (a) An annual report of operations shall be submitted to the excavation administrator for each group II, III
18 and IV excavation. An "as-built" certification by an engineer that the excavation has been conducted
19 in accordance with the permit provisions, including the approved excavation plans, shall be
20 submitted in conjunction with each annual report. Both documents shall be submitted on or before
21 December 31 of each calendar year following the permit issuance date and shall include all activity
22 through October 1 of that calendar year. For permits issued on or after October 1 of any calendar
23 year, the Applicant may submit the first annual report on the second December 31 following the
24 permit issuance and on December 31 of each calendar year thereafter.~~

~~25 (b) Each report shall summarize the excavation and reclamation progress to date, identify lands planned
26 for excavation during the next year, state the total amount in cubic yards of material excavated and
27 total number of truckloads transporting excavated material leaving the site to date and the
28 percentage of such excavated material in relation to the total amount of material permitted to be
29 excavated, state the amount in cubic yards of material intended to be excavated in the next year and
30 the percentage of such material in relation to the total amount permitted to be excavated. The report
31 shall also verify compliance with all other conditions of other permitting authorities and shall note the
32 expiration dates for all permits applicable to the excavation, earthmoving, and reclamation activities.
33 Each report shall include a completed annual report checklist on a form provided by the county.~~

~~34 (c) Failure to file the required annual report shall be grounds for suspension of the activities authorized
35 by the permit; however, an extension of time for filing may be granted by the excavation
36 administrator for reasonable cause upon a written request received by the excavation administrator
37 prior to the date that the report is due.~~

~~38 **Sec. 3-5-492. Violations.**~~

~~39 (a) If at any time during the term of the permit the excavation administrator finds that the provisions of a
40 permit, a development agreement, this article, or other applicable law have been violated, the
41 excavation administrator may issue a stop work order. The stop work order shall remain in effect until
42 the excavation and/or all other activities are brought into compliance with the permit, and in the event
43 of damage to surrounding properties, all such damage has ceased and been repaired.~~

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1 ~~(b) It is unlawful for any person to violate or fail to comply with the provisions of this article or any~~
2 ~~provisions adopted by reference herein. violations shall be enforced pursuant to applicable law.~~

3 ~~**Sec. 3-5-493. Penalties.**~~

4 ~~(a) Where applicable to the purpose and scope of this article, the provisions of the Charlotte County~~
5 ~~Code Enforcement Board Ordinance, and the procedures contained therein are hereby adopted and~~
6 ~~incorporated into and made a part of reference. Violations of any provisions of this article shall be~~
7 ~~subject, but not limited to, the requirements and remedies of the Charlotte County Code Enforcement~~
8 ~~Board and/or the BCC pursuant to F.S. Ch. 162.~~

9 ~~(b) Where applicable, any person, firm or corporation violating any provisions of this article shall, upon~~
10 ~~conviction, be punished by a fine of up to five hundred dollars (\$500.00) and/or up to sixty (60) days~~
11 ~~imprisonment in the county jail, as provided by law for the violation of county ordinances. Each day~~
12 ~~of violations shall constitute a separate offense. In addition to the penalties provided for herein, the~~
13 ~~BCC is authorized to bring suit in any court of competent jurisdiction to restrain, enjoin or otherwise~~
14 ~~prevent violations of this article.~~

15 ~~(c) Any person violating any provisions of this article shall be liable for all costs incurred by the county in~~
16 ~~connection with enforcing this article including, without limitations, attorneys fees.~~

17 ~~**Sec. 3-5-494. Appeals.**~~

18 ~~(a) *Determination of vested rights or denial of all economic use.*~~

19 ~~(1) Nothing in this section shall be construed or applied to abrogate the vested right of a property~~
20 ~~owner to complete development of a parcel where the property owner can demonstrate by~~
21 ~~substantial competent evidence each of the following:~~

22 ~~(A) The property owner had a preliminary hearing scheduled prior to the effective date of this~~
23 ~~ordinance as amended; and~~

24 ~~(B) The property owner has detrimentally relied, in good faith on chapter 3-5, article XXIII (Ord.~~
25 ~~No. 2003-003), by making substantial expenditures; and~~

26 ~~(C) That it would be highly inequitable to deny the property owner the right to complete the~~
27 ~~development.~~

28 ~~(2) Nothing in this section shall be construed or applied to prevent development of a particular~~
29 ~~parcel where the property owner can demonstrate by substantial competent evidence that no~~
30 ~~economic use can be made of the parcel.~~

31 ~~(3) Any property owner claiming vested rights or a denial of all economic use under this section,~~
32 ~~must file an application with the county for a determination within thirty (30) days. The~~
33 ~~application shall be accompanied by an application fee of one thousand five hundred dollars~~
34 ~~(\$1,500.00) and contain a sworn statement as to the basis upon which the vested rights or~~
35 ~~denial of all economic use are asserted, together with documentary evidence supporting the~~
36 ~~claim and any further documentation required by the county. The hearing examiner shall hold a~~
37 ~~public hearing on the application and the property owner must provide competent substantial~~
38 ~~evidence in order for the hearing examiner to make a determination as to whether the property~~
39 ~~owner has established vested rights or has been denied all economic use of the parcel.~~

40 ~~(b) *Judicial review and exhaustion of administrative remedies.*~~

41 ~~(1) No property owner claiming that this article as applied constitutes or would constitute a taking of~~
42 ~~private property or an abrogation of vested rights may pursue such a claim in court unless he or~~

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1 she has first exhausted the applicable administrative remedies provided in subsection (a) above
2 or any other statutory provisions as set forth under Florida law.

3 ~~(2) Judicial review of final permit decisions under this article shall be by the filing of a Petition for~~
4 ~~Certiorari in the Circuit Court of the Twentieth Judicial Circuit in and for Charlotte County in~~
5 ~~accordance with the Florida Rules of Appellate Procedure for the review of quasi-judicial~~
6 ~~decisions of a local government entity.~~

7 **Sec. 3-5-495. Inspection.**

8 ~~(a) The excavation administrator shall have the right to inspect the lands affected under this article. This~~
9 ~~right shall extend to lands already permitted to ensure compliance with this article and all conditions~~
10 ~~of the permit, as well as those lands where the applicant has submitted a complete application to the~~
11 ~~community development department for the issuance of a permit under this article.~~

12 ~~(b) Inspections shall be performed at least annually. At least twenty four (24) hours' advance notice~~
13 ~~where practicable of inspections shall be required and upon arrival the inspector shall attempt to~~
14 ~~contact operating personnel.~~

15 ~~(c) A copy of all required local, state and federal permits and reports must be available for inspection on~~
16 ~~site at all times.~~

17 ~~(d) A copy of the site plan must be available for inspection on site at all times.~~

18 **Sec. 3-5-496. Monitoring.**

19 ~~(a) Groundwater. The quality and level of the surficial aquifer shall be monitored in monitoring wells~~
20 ~~required by the applicable Florida Water Management District beginning sixty (60) days before~~
21 ~~excavation begins. The parameters of the monitoring shall be adopted by resolution of the BCC.~~

22 ~~(b) Reports. After initiation of its monitoring program, the permittee shall report monthly to the~~
23 ~~excavation administrator summarizing the results of the monitoring. Additionally, copies of all reports~~
24 ~~required by state or federal agencies shall also be simultaneously submitted to the excavation~~

25 **Secs. 3-5-497 - 3-5-500. Reserved.**

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County staff shall review earthmoving operations governed by this Article for consistency with the Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County, Florida.

Section 3-5-462. Nonconformities.

An earthmoving operation that has been approved by the County, which has a valid permit on the effective date of this Article and which is made nonconforming by this Article, may continue to operate in accordance with the regulations under which it was approved. Any request for a non-administrative modification shall require the operation to come into compliance with this Article, the Comprehensive Plan, and the Land Development Regulations.

(a) A request to renew a permit for a nonconforming operation may only be approved if all of the following conditions are met at the time of renewal:

- (1) The operation is in compliance with the standards, requirements, and conditions of the permit.
- (2) There are no changes to the operation.
- (3) All local, State, and Federal permits are valid.

(b) The operation shall comply with any new fees that have been adopted prior to the renewal date.

Section 3-5-463. Exempt Earthmoving Operations.

(a) Notification to the County for earthmoving activities associated with the following operations shall not be required. This does not remove the requirement to apply for other necessary County permits, such as a right-of-way permit.

- (1) Grave digging.
- (2) Well construction.
- (3) Maintenance dredging of canals and stormwater ponds. Publicly-funded maintenance dredging shall not occur within 15 feet of a seawall and 10 feet of a piling support structure.
- (4) Plowing, tilling and other similar soil alteration when in association with the cultivation of crops for human or animal consumption, for renewable energy manufacture, or for silviculture operations.
- (5) Flower gardening and landscaping when conducted on a lot containing a habitable dwelling unit as long as there are no adverse impacts on adjacent properties.
- (6) Garden supply retailing or wholesaling. The stockpiling of loose soil, gravel, mulch, and other similar gardening materials that are accessory to the business.
- (7) Construction of nonresidential farm buildings.
- (8) Construction of public roads and associated stormwater infrastructure.
- (9) Mini Farm Pond construction. This is an excavation with a footprint that is less than or equal to three acres and which will be used as a livestock watering pond, irrigation pond, or other bona fide agriculture use. The total amount of cumulative acres of excavations that may occur on

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contiguous lots is 10 percent of the total acreage of the lot or contiguous lots. The cumulative acres are inclusive of all excavations on-site but exclusive of ditches.

(b) Exemption Verification Process.

Notification to the County for earthmoving activities associated with the following operation shall be required in order to confirm the exempt status of the operation.

(1) Small Farm Pond construction. This is an excavation with a footprint that is larger than three acres but less than or equal to fifteen acres and which will be used as a livestock watering pond, aquaculture pond, irrigation pond, or similar bona fide agriculture use. The total amount of cumulative acres of excavations that may occur on contiguous lots is 10 percent of the total acreage of the lot or contiguous lots. The cumulative acres are inclusive of all excavations on-site but exclusive of ditches. These operations shall meet the following requirements:

(A) Location

i) If the lot is located in the Rural Service Area, it shall have a consistent zoning and Future Land Use Map designation that allows agriculture:

a) Zoned Agriculture General or Agriculture Estate with an Agriculture Future Land Use Map (FLUM) designation.

b) Zoned Excavation and Mining with a Mineral Resource Extraction FLUM designation.

c) Zoned Planned Development with a Rural Community Mixed Use FLUM designation.

d) Zoned Residential Estates-1 or -5 with a Rural Estate Residential FLUM designation.

ii) If the lot is located in the Urban Service Area, it shall have a consistent zoning and FLUM designation that allows agriculture or a vested bona fide agriculture use.

(B) All aspects of this earthmoving operation shall only occur on uplands.

(C) No excavated material shall be placed in a floodplain.

(D) All excavated material shall be retained on-site; the manner in which the material will be permanently disposed shall be described and, if appropriate, illustrated.

(E) The depth of the excavation shall not exceed two feet above confining layer; all operations proposing a depth below 12 feet shall comply with the soil boring requirements of this Article.

(F) The minimum setback from top of bank to any lot line, easement, and structure shall be 10 feet.

Section 3-5-464. Operation Standards.

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1 (a) General Earthmoving Operation Standards.

2 The following general standards of operation apply to all earthmoving operations:

3 (1) Hours of Operation

4 (A) In the Rural Service Area and in the Urban Service Area of the Babcock DRI, an
5 earthmoving operation located within two miles of a dwelling unit in existence at the
6 time of permitting, shall only conduct operations between the hours of 7:00 a.m.
7 and 6:00 p.m. Monday through Friday and between the hours of 7:00 a.m. and
8 12:00 p.m. on Saturday, unless otherwise approved by the Earthmoving
9 Administrator. If there is no dwelling unit within two miles, the hours of operation
10 are not restricted.

11 (B) In the Urban Service Area, but not including the Urban Service Area of the
12 Babcock DRI, an earthmoving operation shall only conduct operations between the
13 hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and between the hours of
14 7:00 a.m. and 12:00 p.m. on Saturday.

15 (C) For excavations for Agricultural purposes, the only restrictions to hours of operation
16 are for trucks hauling material offsite. Truck traffic hours are restricted to 7:00 a.m.
17 and 6:00 p.m. Monday through Friday and between the hours of 7:00 a.m. and
18 12:00 p.m. on Saturday.

19 (2) An earthmoving operation shall not have an adverse impact on the quality or quantity of
20 groundwater or surface water of surrounding or downstream properties.

21 (3) An earthmoving operation shall not impede or destroy historic flowways. All historic flowways on
22 the earthmoving operation site shall be protected and, if necessary due to degradation, restored.

23 (4) An earthmoving operation shall not have an adverse impact on the 100-year floodplain.

24 (5) An earthmoving operation shall not impact off-site drainage.

25 (6) An earthmoving operation shall not have an adverse impact on environmentally sensitive habitat
26 or any listed species either on-site or off-site.

27 (7) An earthmoving operation shall protect wetlands and other surface waterbodies.

28 (A) There shall be a minimum setback of 50 feet, or as approved by the state permit,
29 vegetated with native species, from any activity associated with an earthmoving
30 operation to:

31 i) Any on-site wetland, unless mitigation for its destruction is approved, and any
32 on-site waterbody that is not integral to the earthmoving operation.

33 ii) Any off-site wetlands or waterbodies.

34 (B) No activity other than the removal of exotic invasive species shall take place within
35 this setback. Depending on the duration and intensity of the activity, plantings of
36 native vegetation may be required within the buffer.

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1 (C) Sediment barriers, fencing, and signage, as necessary depending on the activity,
2 shall be placed along the outside edge of the 50 foot setback as protection.

3 (8) An earthmoving operation shall minimize wind erosion of exposed soils.

4 (A) Best Management Practices to reduce wind erosion shall be used.

5 (B) All areas of one acre or greater that will result in exposure of denuded soil during
6 the months of November through March shall employ dust and other airborne
7 debris control procedures.

8 (C) All areas of one acre or greater, except roads and other surfaces designed for
9 vehicular circulation, which will be subject to erosion for a period longer than twelve
10 months prior to the establishment of finished grade, agricultural crops, or
11 permanent perennial vegetative cover shall be stabilized 30 days after creation.

12 (D) Unpaved roads and other surfaces designed for vehicular circulation shall be
13 treated during dry periods to reduce dust and other airborne debris emissions.

14 (E) Stockpiles shall not be higher than 50 feet and shall be treated as necessary to
15 reduce dust and other airborne debris emissions.

16 (9) An earthmoving operation shall control water erosion and the effects of water erosion.

17 (A) Best Management Practices to reduce water erosion and the effects of water
18 erosion shall be used.

19 (B) All slopes shall be stabilized. Stabilization may be done with a perennial grass
20 cover and with native plants appropriate to the conditions of the site. Grass and
21 native plant cover shall be required to extend down to the seasonal high
22 groundwater line only.

23 i) Stabilization of excavation or fill operations is required to be completed when
24 the final shaping of the slopes is done.

25 ii) Stabilization of stockpiles is required if the stockpile will be in place for longer
26 than six months.

27 iii) Stabilization of other slopes is required upon completion of the project.

28 (C) All development sites shall be bordered by sediment barriers in order to filter any
29 water leaving the site.

30 (D) The toe of all exposed slopes not interior to an excavation operation shall be
31 bordered by sediment barriers.

32 (E) Barriers shall be placed and maintained such that drainage will not overflow or
33 bypass the barrier. The effectiveness of the filtration shall be maintained by regular
34 clearing of captured sediments or by refurbishment, as necessary. Captured
35 sediments are to be disposed of on upland portions of the development site.

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1 (F) Barriers shall remain in place until the slope is leveled or the site is permanently
2 stabilized.

3 (10) An earthmoving operation shall protect native topsoils to the greatest extent practicable. Any
4 site which is identified by the Natural Resource Conservation Service as devoid of native
5 topsoils shall be exempt from this requirement. Agriculture (Ag) Excavations and Commercial
6 Excavations are exempt from this requirement.

7 (A) The topsoil that occurs on a lot prior to development shall be retained or stockpiled
8 throughout the development of the lot such that it will not be lost during the removal
9 of earth or placement of fill.

10 (B) Following fill placement and prior to landscaping, stockpiled topsoils shall be
11 redistributed over the exposed portions of the site.

12 (11) An earthmoving operation shall protect drainage easements.

13 (A) Existing front and side swales shall not be filled or obstructed in any way, and the
14 adjacent lot's drainage shall be maintained. Easements may be altered with
15 agreement of the easement holder.

16 (B) Vehicles and equipment shall not be moved onto any site unless it is over an
17 acceptably constructed and approved crossover.

18 (C) Earthmoving operations requiring access across county rights-of-way shall install a
19 temporary pipe in the right-of-way as required by the County Engineer. Temporary
20 pipe must remain in place until permanent pipe is placed, if required, or the
21 operation is completed.

22 (12) An earthmoving operation will require permits in accordance with Charlotte County law and
23 applicable Federal and State law for any burning or incineration.

24 (13) An earthmoving operation site shall be safely secured against trespass. Depending on the
25 duration of the activity, the intensity of the activity and adjacent uses, a fence or other similar
26 means of securing the site may be required.

27 (14) Depending on the duration of the activity, the intensity of the activity and adjacent uses, an
28 earthmoving operation site may be required to be aesthetically enhanced with landscaped
29 screening buffers or landscaped earthen berms.

30 (15) Generators and pumps used during an earthmoving operation shall be well muffled.

31 (b) Excavation Specific Operation Standards.

32 The following additional standards apply to excavation operations.

33 (1) The maximum depth of any excavation is two feet above the confining layer.

34 (2) The finished slope of any excavation bank shall meet or exceed four horizontal to one vertical.
35 For agricultural excavations this slope is measured from top of bank to a depth no less than two

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1 feet below the mean water table and for all other excavations this slope is measured from top of
2 bank to a depth no less than five feet below the mean water table.

3 (3) In order for stormwater to be discharged into an excavation, a Stormwater Plan must be
4 approved by the County or applicable water management district.

5 (4) No solid or liquid waste shall be placed in an excavation except for clean debris in accordance
6 with Subsection 3.5.466(e).

7 (5) Dewatering operations shall not cause adverse impacts to drawdown of the groundwater table
8 outside the excavation site and any excavation operations that result in detrimental fluctuations
9 of water levels in adjacent water bodies, wetland areas or water supply wells shall be
10 terminated until such time as a satisfactory plan is developed and implemented to maintain
11 water levels in such areas.

12 (6) Blasting, drilling or hammering to fracture a rock surface, and similar activities, shall be limited
13 to the hours between 9 a.m. and 4 p.m. Monday to Friday and 9 a.m. and 12 p.m. Saturday if
14 conducted within one mile of any habitable dwelling unit or institutional use, unless otherwise
15 approved. Trees and other buffering techniques may be required to mitigate noise impacts.

16 (7) The permit holder shall provide traffic safety improvements such as signing, striping, barrier
17 rails, turn and/or acceleration lanes with tapers, all meeting American Association of State
18 Highway and Transportation Officials' Standards and which shall comply with the Manual of
19 Uniform Traffic Control Devices, as required by the County Engineer.

20 (8) Haul routes:

21 (A) To the greatest extent possible, internal haul routes shall not be located within 250
22 feet of the lot boundary of the site, except at the lot exit and entry point.

23 (B) An apron is required at the terminus of the internal haul route where it intersects
24 the external haul route. Aprons shall be built to the specifications of the County
25 Engineer.

26 (C) The use of haul routes shall not have undue impact on persons and properties
27 along or in proximity to a haul route. An undue impact would be an increase in
28 airborne debris beyond what is normally experienced without the earthmoving truck
29 traffic, increased noise during the evening and night hours from truck traffic, or
30 trucks that exceed speed limits or are otherwise determined to be operating in
31 contradiction of the law.

32 (D) It shall be the responsibility of the permit holder to mitigate impacts arising from the
33 use of haul routes. Required mitigation measures may include any or all of the
34 following:

35 i) Watering and other dust control measures.

36 ii) Cleanup of material overspills.

37 iii) Maintenance grading of unpaved roads, shoulder grading and restoration.

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xi) Pavement maintenance, including resurfacing, reconstruction, and patching.

x) Safety improvements such as striping barrier rails, turn and acceleration lanes.

(E) If a privately maintained right-of-way is used to gain access to an operation site, the applicant shall supply an affidavit indicating that they have legal use of that right-of-way for a haul route.

Section 3-5-465. Standard Earthmoving and Construction Permits.

The following activities shall require County review and approval prior to the commencement of any earthmoving activity; review and approval by the Earthmoving Administrator is not required. No earthmoving activity shall occur on-site prior to the approval of the permit. If excavated material is to be removed from the site, the roadway service life reduction fee will be assessed. [For a Development of Regional Impact, the development site shall mean any of the area within the DRI boundary.] Stockpiling is considered an accessory to these earthmoving activities but shall only be allowed for material used on the development site and cease when there is no longer a valid permit for the site.

(a) Standard Earthmoving Permits.

The following activities require a Standard Earthmoving Permit.

(1) Site preparation earthmoving activities for subdivisions, multi-family, commercial, and industrial site development which includes approval of earthmoving activities that occur prior to approval of a construction permit or final plat, such as site grading, stormwater and other utility installation, and road construction. This review process will occur simultaneous with the Site Plan Review process and the approved Standard Earthmoving Permit will be given to the applicant when the project receives Final Site Plan approval. Earthmoving in association with construction of a building on the development site may be otherwise reviewed and approved through the Construction Permit process.

(2) Earthmoving activities associated with the creation of residential ponds. This activity shall meet the following requirements:

(A) The lot shall contain a habitable dwelling unit on land zoned for residential use.

(B) The following design requirements are adhered to:

i) The maximum excavation footprint shall be equal to or less than ten percent of the lot or one acre, whichever is less, inclusive of all excavations on-site.

ii) The depth shall not exceed 12 feet.

iii) There shall be a minimum setback of 25 feet from top of bank to any lot line, easement, and structure.

(3) Earthmoving activities associated with the creation of tracks and trails used by off-road vehicles, motorbikes, bicycles and other similar apparatuses.

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- 1 (4) Earthmoving activities associated with the repair, replacement or expansion of septic tanks and
2 drain fields.
- 3 (5) Raising the elevation of a portion of a lot. This shall contain a habitable dwelling unit, and the
4 maximum height that can be reached through this type of filling is one foot above natural grade.
- 5 (6) Earthmoving activities associated with development of active and passive parks, such as
6 playgrounds, ball courts and fields, trails, and associated parking.
- 7 (7) Stockpiling of dredge spoils. Dredge spoil may be stored on vacant or developed residential,
8 commercial, or industrial lots only if the following requirements are met:
- 9 (A) The storage occurs no longer than one year.
- 10 (B) The spoil pile is at least 20 feet from any buildings.
- 11 (C) The spoil pile is stabilized and measures are used to reduce the migration of dust
12 and other airborne debris.
- 13 (D) There shall be no removal of or harm to native plant or animal species, except
14 grasses, to accommodate the storage. A listed species survey, for flora and fauna,
15 and identification of the FLUCCS category of the proposed spoil site are required to
16 satisfy this requirement.
- 17 (E) The areas used for stockpiling shall be reclaimed by plantings with native
18 groundcover, shrubs, and trees, or proof provided in the form of an approved
19 Construction Permit that the site will be developed with a legal use after the
20 stockpile has been removed. If the site is not to be developed with a use, the site
21 shall be planted so that at least 20 percent of the area used for the stockpiling
22 activity is covered with native trees and shrubs; the remainder shall be seeded with
23 native grasses or other native plants.

24 (b) Construction Permits.

25 The following individual activities will not require a separate application for an earthmoving permit, but
26 will be permitted in accordance with otherwise applicable County regulations: the installation of
27 irrigation pipe, commercial landscaping, slabs, driveways, seawall construction, construction or
28 destruction of pools and buildings including standard building permits, tree removal and such other
29 similar development activities. Activities that are first reviewed through Site Plan Review should have
30 obtained a Standard Earthmoving Permit for much of the site preparation earthmoving associated
31 with that activity, such as the installation of utilities, roads, and stormwater infrastructure.

32

33 Section 3-5-466. Specific Earthmoving Permits.

34 The following categories consist of activities that require review and approval by the Earthmoving
35 Administrator. No earthmoving activity shall occur on-site prior to the approval of a permit.

36 (a) Reconfiguration of a Lake (Lake Reconfiguration).

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1 This is for changing the configuration of an existing lake, increasing the size, or increasing the depth
2 more than would occur with a maintenance dredge. The following requirements apply:

3 (1) The maximum amount of excavated material that may be removed from the site is 10 percent
4 or 15,000 cubic yards of the total amount of cubic yards to be excavated.

5 (2) There shall be a minimum setback of 50 feet from top of bank to any lot line, easement, and
6 structure.

7 (b) New Canal or Increasing the Width of a Canal (Canal Excavation).

8 This is for increasing the top width of an existing canal or dredging a new canal. The following
9 requirements apply:

10 (1) The maximum amount of excavated material that may be removed from a new canal site is 10
11 percent or 15,000 cubic yards of the total amount of cubic yards to be excavated.

12 (2) A canal top-of-bank may extend to the limits of the easement, right-of-way, or to adjacent lot
13 lines.

14 (c) Raising Lot Elevation (RLE).

15 This is for increasing the elevation of a portion of a lot by more than one foot above natural grade; this
16 includes aggregated height of any previous filling operations. The following requirements apply:

17 (1) The lot shall contain a habitable dwelling unit on land zoned for residential use.

18 (2) The maximum amount of fill that can be placed on a lot of five acres or less is 130 cubic yards
19 and of greater than five acres is 260 cubic yards.

20 (3) Stockpiles shall be located a minimum of 50 feet from any lot line or easement.

21 (4) All areas shall be seeded, sodded, or planted with native vegetation or other landscaping
22 immediately after grading is complete.

23 (d) Stockpiling Fill (Stockpiling).

24 This is for the purpose of stockpiling excavated material on a lot which is not otherwise permitted for
25 an earthmoving operation or construction operation.

26 (1) Stockpiling as a principal use of land shall only occur on a lot zoned IL with a Low Intensity
27 Industrial FLUM designation, zoned IG with a Heavy Industrial FLUM designation, zoned EM
28 with a Mineral Resource Extraction FLUM designation, or zoned AG/AE with an Agriculture
29 FLUM designation.

30 (2) A stockpile shall not be located within 50 feet of a lot line or easement, 200 feet of a habitable
31 dwelling unit or institutional use, and 50 feet of an agricultural or industrial structure.

32 (3) All areas used for stockpiling shall be reclaimed by plantings with native groundcover, shrubs,
33 and trees, or proof provided in the form of an approved construction permit that the site will be
34 developed with a legal use after the stockpile has been removed; if in agriculture land use a site
35 visit to confirm use for a bona fide agriculture use subsequent to the stockpiling activity will

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1 suffice. If the site is not to be developed with a use, the site shall be planted so that at least 20
2 percent of the area used for the stockpiling activity is covered with native trees and shrubs; the
3 remainder shall be seeded with native grasses or other native plants.

4 (e) Filling of an Excavation (Clean Fill).

5 This is for the purpose of filling in an excavated area. The following requirements apply:

6 (1) Only clean debris as defined in 62-701.200 F.A.C., as may be amended, and clean gravel,
7 sand, rock, and clay may be placed within an excavation.

8 (2) Clean debris shall only be placed to within 10 feet of the proposed finished elevation of the
9 site. The remaining 10 feet to the proposed finished elevation shall be filled with soil.

10 (3) The type, tonnage and origin of the clean debris shall be reported on a quarterly basis to the
11 Earthmoving Administrator.

12 (4) All filled areas shall be reclaimed by plantings with native groundcover, shrubs, and trees, or
13 proof provided in the form of an approved construction permit that the site will be developed
14 with a legal use after the filling has been completed. If the site is not to be developed with a
15 use, the site shall be planted so that at least 20 percent of the area used for the stockpiling
16 activity is covered with native trees and shrubs; the remainder may be seeded with native
17 grasses or other native plants.

18 (f) Excavation for Agricultural Purposes (Ag Excavation).

19 This is an excavation with a footprint that is greater than 15 acres and which will be used for surface
20 water storage for a bona fide agriculture use. The following requirements apply:

21 (1) The lot shall be located in the Rural Service Area and:

22 (A) Zoned Agriculture General or Agriculture Estate with an Agriculture FLUM
23 designation.

24 (B) Zoned Planned Development with a Rural Community Mixed Use FLUM
25 designation.

26 (2) The site shall be approved by or be undergoing approval by a State or Federal agency involved
27 in cost sharing expenses for the earthmoving activity. For example, review by the Southwest
28 Florida Water Management District under the Facilitating Agricultural Resource Management
29 Systems program. An approved application is required from the appropriate agency prior to the
30 County application being approved.

31 (3) If excavated material is to be hauled offsite, the roadway service life reduction fee will be
32 assessed.

33 (4) The following design requirements shall be adhered to:

34 (A) The maximum excavation footprint and the maximum cumulative acres of all
35 excavations on-site, excluding ditches, is 10 percent of the total acreage of crops to
36 be irrigated.

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(B) There shall be a minimum setback of 25 feet from top of bank to non-residential zoning district, 1,000 feet to any residential zoning district, and 1,000 feet to any habitable dwelling unit or institutional structure unless the occupants and owners, if not the same, of the affected structures consent to a reduced setback.

(g) Excavation for Commercial Purposes (Commercial Excavation).

This is an excavation that will be supplying material for construction sites, such as for roadbeds or building pads. The following requirements apply:

(1) The lot shall be located in the Rural Service Area and zoned Excavation and Mining with a Mineral Resource Extraction FLUM designation.

(2) There shall be a minimum setback of 25 feet from top-of-bank to any non-residential zoning district, 1,000 feet to any residential zoning district, and 1,000 feet to any habitable dwelling unit or institutional structure unless the occupants and owners, if not the same, of the affected structures consent to a reduced setback.

(3) Uses that are considered accessory to a commercial excavation are asphalt and concrete plants. These uses must be requested and identified within the earthmoving application and may only exist for the duration of the earthmoving permit.

(4) Vegetative reclamation of a commercial excavation site requires the following:

(A) At least 40 percent of the littoral zone of the reclaimed shoreline of the excavated area shall be planted with aquatic vegetation. An additional 15 percent of the reclaimed shoreline shall be shaped into a littoral shelf extending no less than 15 feet into the excavated area and designed to have less than 24 to 20 inches of water during normal water level periods. The littoral zone and shelf shall be planted with a mixture of native emergent, floating, and submerged plant species of at least three different species. At installation, the plants shall cover at least 85 percent of the areas designated for planting.

(B) An upland planting area is required along the reclaimed perimeter of the excavation footprint. The upland planting area shall utilize the following standards:

i) Required plant units per 100 feet of the perimeter of the excavated area shall be 3 canopy trees, 1 accent/understory tree and 5 shrubs.

ii) The upland planting area shall be a minimum width of 20 feet.

iii) Canopy trees for use within the buffer include:

| | |
|---------------------|---------------------------|
| <u>Bald Cypress</u> | <u>Taxodium distichum</u> |
| <u>Gumbo Limbo</u> | <u>Bursera simaruba</u> |
| <u>Laurel Oak</u> | <u>Quercus laurifolia</u> |
| <u>Live Oak</u> | <u>Quercus virginiana</u> |
| <u>Sabal Palm</u> | <u>Sabal palmetto</u> |
| <u>Sea Grape</u> | <u>Coccoloba uvifera</u> |

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Southern Slash Pine Pinus elliottii var. densa

iv) Understory trees for use within the buffer include:

| | |
|--------------------------|---|
| <u>Florida Privet</u> | <u>Forestiera segregate</u> |
| <u>Red Cedar</u> | <u>Juniperus virginiana</u> |
| <u>Silver Buttonwood</u> | <u>Conocarpus erectus var. sericeus</u> |
| <u>Simpson's Stopper</u> | <u>Myrcianthes fragrans</u> |
| <u>Stoppers</u> | <u>Eugenia spp. (natives only)</u> |
| <u>Wax Myrtle</u> | <u>Myrica cerifera</u> |
| <u>Wild Coffee</u> | <u>Psychotria undata</u> |

v) Shrubs for use within the buffer include:

| | |
|---------------------------|---------------------------------|
| <u>Beautyberry</u> | <u>Callicarpa americana</u> |
| <u>Eastern Gammagrass</u> | <u>Tripsacum dactyloides</u> |
| <u>Fakahatchee Grass</u> | <u>Tripsacum dactyloides</u> |
| <u>Firebush</u> | <u>Hamelia patens</u> |
| <u>Firecracker Plant</u> | <u>Russelia equisetiformis</u> |
| <u>Florida Privet</u> | <u>Forestiera segregate</u> |
| <u>Saw Palmetto</u> | <u>Serenoa repens</u> |
| <u>Simpson's Stopper</u> | <u>Myrcianthes fragrans</u> |
| <u>Wax Myrtle</u> | <u>Myrica cerifera and cvs.</u> |

vi) In no case shall there be a separation of greater than 50 feet between trees.

vii) Other indigenous species may be approved by the County for use in the upland planting area.

viii) Clustering of vegetation may be allowed on a case-by-case basis.

ix) All planted material shall be Florida #1 grade according to Florida Department of Agriculture and Consumer Services, Grades and Standards; trees shall be minimum three-gallon size; shrubs shall be minimum one (1) gallon size, and minimum height of 18 inches.

Section 3-5-467. Earthmoving Operations not Identified by this Article.

Any operation not identified in this Article shall be reviewed on a case-by-case basis by the Earthmoving Administrator and will be assigned to an appropriate category.

Section 3-5-468. Specific Earthmoving Permit Application Requirements.

(a) Information Required in an Application.

An application for a Specific Earthmoving Permit shall include, at a minimum, the items checked below. The application shall be deemed complete if all of the checked information is included in the application. Other information may be required by the Earthmoving Administrator upon sufficiency

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review of the application. The County will accept the same application information that an applicant submits to a State or Federal agency, or an approved permit, if the applicant chooses to use that information to prove that the operation will meet the standards and requirements of this Article.

| <u>Information Required in Application</u> | <u>Lake Reconfiguration</u> | <u>Canal Excavation</u> | <u>RLE</u> | <u>Stockpiling</u> | <u>Clean Fill</u> | <u>Ag Excavation</u> | <u>Commercial Excavation</u> |
|--|---|-------------------------|------------|--------------------|-------------------|--|------------------------------|
| <u>Completed application form</u> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| <u>Monetary payment</u> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| <u>Deed or other proof of ownership</u> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| <u>Application affidavits</u> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| <u>Location Map</u> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| <u>Legal description & boundary survey of project site</u> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| <u>Haul route affidavit</u> | <u>Required if using privately maintained right-of-way, Section 3.5.464, C., 8., e.</u> | | | | | | |
| <u>Project narrative</u> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| <u>Variance request</u> | <u>Required if a variance to standards is being requested, Section 3.5.474</u> | | | | | | |
| <u>Excavation plans</u> | ✓ | ✓ | None | None | None | ✓ | ✓ |
| <u>Site plans</u> | None | | ✓ | ✓ | ✓ | None | |
| <u>Soil boring report</u> | <u>Required if depth is greater than 12 feet, Section 3.5.468D</u> | | None | None | None | <u>Required if depth is greater than 12 feet, Section 3.5.468D</u> | |
| <u>Reclamation plans</u> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| <u>Environmental surveys</u> | ✓ | ✓ | ✓ | ✓ | None | ✓ | ✓ |
| <u>Environmental impact statement</u> | None | None | None | None | None | ✓ | ✓ |
| <u>Hazardous material assessment</u> | ✓ | ✓ | None | None | None | ✓ | ✓ |
| <u>Traffic Impact Analysis</u> | ✓ | ✓ | None | ✓ | ✓ | ✓ | ✓ |
| <u>Stormwater Plan</u> | <u>As required by Section 3.5.464, C3</u> | | | | | | |
| <u>Statement regarding blasting and, if necessary, Fire Marshall Blasting Permit</u> | ✓ | ✓ | None | None | ✓ | ✓ | ✓ |
| <u>Statement regarding rock crushing</u> | ✓ | ✓ | None | None | ✓ | ✓ | ✓ |
| <u>Statement regarding cement crushing</u> | None | None | None | None | ✓ | None | None |

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(b) Project Narrative.

A project narrative shall include the following information:

- (1) Description of all activity that will take place on-site.
- (2) Type and amount of material to be moved, removed, or stored.
- (3) Probable schedule.
- (4) Who maintains ownership of the site and operation; who is the responsible party for the operation.
- (5) Proposed legal measures to provide for perpetual maintenance of any common or dedicated open space, easements, dedications and reservations.
- (6) Erosion control measures.
- (7) Noise control measures.
- (8) Description of how the site will be secured.

(c) Excavation Plans.

(1) Excavation plans are for excavation operations and shall include the following information:

- (A) Ownership and boundary lines, including bearings and distances superimposed over an aerial photo. Out-parcels within the site shall be clearly indicated along with access to these outparcels.
- (B) Size, shape, depth and location of the proposed excavation, including recharge trenches and settling ponds.
- (C) Locations of all proposed spoil piles and stockpiles of excavated material.
- (D) Within the site and within one-half mile of the site identify right-of-ways, easements, and lot ownership; natural physical features such as flowways, 100-year floodplain, wetlands, lakes and critical wildlife habitat; manmade features such as utility lines, wells, septic systems, storage tanks, drainage ditches, houses, and barns. Provide the distance from the site and the excavation footprint to these features.
- (E) Show access roads into the site. Internal haul routes shall be identified along with roadway specifications, drainage requirements and signage locations and type. Identify maintenance measures.
- (F) If material is to be hauled off-site, identify all possible external haul routes within a one mile radius and whether these routes are publicly or privately maintained. Show clear line of site distances at entranceway from internal haul route to external haul route. Show what improvements are necessary to haul routes.

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1 (G) Topographic survey showing existing and proposed grades related to NGVD.

2 (H) Proposed slopes during excavation, include a cross-sectional drawings referring to
3 NGVD showing the proposed depth(s) of excavation, slope of the side and depth of
4 water.

5 (I) Detailed erosion control methods.

6 (2) Excavation plans shall include the following if required by proposed excavation conditions:

7 (A) Phases of the excavation.

8 (B) Location and preservation plan for all wetlands, waterbodies, and other habitats,
9 including setbacks, exotic species removal, and any re-vegetation requirements.

10 (C) Location, preservation and restoration plan for any historic flowways.

11 (D) Soil borings locations shown in the soil boring report.

12 (E) Proposed method of de-watering and use of settling ponds.

13 (F) Location of all staff gauges.

14 (G) Location of rock crushing, asphalt plant or concrete plant operations.

15 (H) Location and configuration of any vegetative noise buffers or landscape screening
16 buffers and earthen berms.

17 (d) Site Plans

18 Site plans are for non-excavation operations and shall include, but not be limited to:

19 (1) Ownership and boundary lines, including bearings and distances.

20 (2) Location of haul routes or access roads.

21 (3) Adjoining and internal right-of-ways, easements, and lot ownership; natural physical features
22 such as flowways, 100-year floodplain, wetlands, lakes and critical wildlife habitat; all manmade
23 features such as utility lines, wells, septic systems, storage tanks, drainage ditches, houses,
24 and barns.

25 (4) Topographical elevations of the site.

26 (5) Proposed elevations, if applicable.

27 (6) Location of stockpiles, if applicable.

28 (7) Detailed erosion control methods.

29 (8) Location and preservation plan for all wetlands, waterbodies, and other habitats, including
30 setbacks, exotic species removal, and any re-vegetation requirements.

31 (9) Location and configuration of any vegetative noise buffers or landscape screening buffers and
32 earthen berms.

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1 (10) Location of cement crushing or other operations proposing to alter clean debris.

2 (e) Soil Boring Report

3 Soil borings are required when a proposed excavation depth is greater than 12 feet.

4 (1) There shall be one boring per 10 acres, there shall be a minimum of two borings per excavation
5 footprint. Locations of the test borings are based upon site specific conditions.

6 (2) Soil borings shall extend five feet deeper than the proposed depth of the excavation, or to the
7 top of the confining layer.

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

9 (f) Reclamation Plans.

10 (1) Reclamation plans for RLE and stockpiling operations shall include the following:

11 (A) A description of the manner in which restructuring and reshaping will be
12 accomplished and a depiction of the re-vegetation of the site. List the types and
13 amounts of each species used for re-vegetation.

14 (B) A description of how the site will be maintained at least five years after the
15 reclamation is complete.

16 (C) A depiction of what natural and manmade features will exist when the reclamation
17 is complete. This requirement includes the location of mitigation or preservation
18 areas established for wildlife species, fences, walls, and other structures that will
19 be on the property.2. Reclamation plans for all other operations shall meet the
20 requirements listed in F.1. above and will also require a depiction of at least two
21 typical cross-sections each, with elevations, generally oriented north to south and
22 east to west, showing areas to be filled, back-filled, reconstructed and/or reshaped.
23 Water elevations and final grades shall also be shown.

24 (2) Reclamation plans shall be designed, signed and sealed by a Florida Registered Landscape
25 Architect.

26 (g) Environmental Surveys.

27 (1) All environmental surveys shall have been completed within one year of application submittal.

28 (2) Environmental surveys include:

29 (A) FLUCCS map and report of all land covers and forms on the site according to
30 FLUCCS category level 3 at scale of 1 inch equals 200 feet, unless a different
31 scale is approved in writing by the Earthmoving Administrator in advance of
32 application submittal.

33 (B) A listed species survey performed in accordance with State or Federal survey
34 guidelines.

35 (C) A tree survey, including identification of all heritage trees.

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1 (h) Environmental Impact Statement.

2 An EIS is a written and graphic report that analyzes and illustrates the direct, indirect and cumulative
3 impacts of an earthmoving operation upon vegetation, wildlife, wildlife habitat, endangered or
4 threatened species, air quality, water quality, and other issues concerning the public's health, safety
5 and welfare.

6 (1) The EIS shall include all drainage calculations, signed, sealed, and dated by an appropriate
7 registered professional, and supporting documentation demonstrating that the proposed project
8 meets the requirements under Environmental Resource Permit (ERP) rules 62-330.301.

9 (A) Vegetation and wildlife, particularly:

10 i) Impacts on-site and to adjacent natural communities.

11 ii) Impacts to, and mitigation proposed for, wildlife species that reside on or
12 utilize the site, particularly those listed by the U.S. Fish and Wildlife Service
13 or Florida Fish and Wildlife Conservation Commission as endangered,
14 threatened, or of special concern.

15 (B) Air quality, particularly:

16 i) Airborne debris from any excavation, blasting, stockpiling, sorting, vehicular
17 circulation, or other activity.

18 ii) Any exhaust or other emissions from equipment associated with the
19 excavation.

20 (C) Noise from any equipment, blasting, stockpiling, sorting, vehicular circulation, or
21 other activity.

22 (D) Hazardous materials and other potential contaminants, including any naturally
23 occurring elements, particularly radiation, that could become potentially harmful to
24 the public if concentrated by any process associated with the proposed operation,
25 such as dewatering, settling, stockpiling, and sorting.

26 (2) The EIS shall include any other information required by the Earthmoving Administrator due to
27 unique circumstances.

28 (i) Hazardous Materials Assessment.

29 Assess the site for hazardous materials and other potential contaminants, including any naturally
30 occurring elements, particularly radiation, that could become potentially harmful to the public if
31 concentrated by any process associated with the proposed excavation.

32 (j) Traffic Impact Analysis.

33 The methodology for this analysis will be prescribed by the County's Transportation Engineer or
34 County Engineer.

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Section 3-5-469. Performance Assurance for Land Reclamation (PALR).

- (a) The amount of the fee shall be calculated as required in the fee resolution adopted by the Board of County Commissioners.
- (b) This shall be required of Commercial Excavations and may be required for other earthmoving operations in a form acceptable to the County Attorney. The PALR shall remain in effect throughout the duration of the permit term, plus one year.
- (c) It is the permit holder's and lot owner's responsibility to reclaim an earthmoving site prior to the expiration of a permit. Should this action not occur, the County will utilize the PALR to reclaim the site if no other satisfactory solution has been agreed upon with the permit holder or lot owner. If a PALR does not exist and the County must reclaim an earthmoving site, a lien shall be placed on the lot in an amount equal to that expended by the County to reclaim the site.

Section 3-5-470 Roadway Service Life Reduction Fee (RSLR).

- (a) The amount of the fee shall be calculated as required in the fee resolution adopted by the Board of County Commissioners.
- (b) The fee shall be submitted to the County in December of each year that the permit is in effect.
- (c) This shall be required of Excavations that meet the conditions of the resolution. The Roadway Service Life Reduction Fee shall remain in effect throughout the duration of the permit term.

Section 3-5-471. Specific Earthmoving Permit Process and Procedures.

- (a) Pre-Application Meetings.
A pre-application conference is mandatory for new applications and Major Modifications.
- (b) Earthmoving Permit Review Process.
 - (1) Lake Reconfiguration, Canal Excavation, RLE, Stockpiling, and Clean Fill.
 - (A) Applicants shall submit an application. An application shall expire within one year of the date that it was determined to be complete. An extension of one year in total of the expiration date of the application may be requested of the Earthmoving Administrator, provided:
 - i) The extension is requested at least 10 working days prior to the expiration date.
 - ii) The applicant is able to demonstrate that the extension is required because of a delay caused by permitting agencies and not to any fault of the applicant.
 - (B) The Earthmoving Administrator will review the application for completeness within five working days of submittal and will notify the applicant of any deficiencies. If the Earthmoving Administrator deems the application to be incomplete, all review of

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the application shall cease until such time as the application is supplemented by the applicant and deemed complete by the Earthmoving Administrator.

(C) Once the Earthmoving Administrator has determined that the application is complete, sufficiency review will begin. The application will be forwarded to other Staff for their review.

(D) Staff shall conduct their review and provide the Earthmoving Administrator a report containing comments and recommendations concerning the content of the application, whether it should be approved or not approved as submitted and specific information needed or permit conditions deemed necessary to comply with the provisions of this Article and other applicable law. Initial staff review shall be completed within 60 working days of the application being deemed complete.

(E) Upon receipt of the aforementioned reports, the Earthmoving Administrator shall determine whether further information is required from the applicant or a decision of approval or denial can be made. Should it be determined that more information is required, the applicant will be informed and all further review of the application will cease until the information is received.

(F) Once any requested information is received, the Earthmoving Administrator, and other Staff as appropriate, will conduct further review. Any reviews subsequent to the initial review shall occur within 40 working days of the submittal of new information and the applicant shall then be informed if the information adequately satisfies the issue in question.

(G) When the Earthmoving Administrator determines that no further information from the applicant is necessary and all Staff reviews have been finalized, the Earthmoving Administrator will prepare a letter to the applicant explaining the decision made, the reasons for the decision, and, if approved, any special conditions on the operation.

i) In the event the Earthmoving Administrator approves the application:

a) The applicant shall satisfy any outstanding requirements.

b) A permit shall be issued. The permit holder and the lot owner, if not the same, shall be held responsible for complying with all regulations and conditions of the permit and the Code of Laws and Ordinances of Charlotte County, Florida.

c) The permit shall be posted at the site throughout the term of the activity.

ii) In the event the Earthmoving Administrator does not approve the application the applicant may appeal the decision to a Hearing Examiner.

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1 (G) Any amount of time taken to review an application above that time allocated for
2 staff review in this subsection shall be applied to extend the expiration date of the
3 application.

4 (2) Ag Excavations and Commercial Excavations.

5 (A) Applicants shall submit an application. An application shall expire within two years
6 of the date that it was determined to be complete. An extension for one year in
7 total of the expiration date of the application may be requested of the Earthmoving
8 Administrator, provided:

9 i) The extension is requested at least 20 working days prior to the expiration
10 date.

11 ii) The applicant is able to demonstrate that the extension is required because
12 of a delay caused by permitting agencies and not to any fault of the
13 applicant.

14 (B) The Earthmoving Administrator will review the application for completeness within
15 ten working days and notify the applicant of any deficiencies. If the Earthmoving
16 Administrator deems the application to be incomplete, all review of the application
17 shall cease until such time as the application is supplemented by the applicant and
18 deemed complete by the Earthmoving Administrator.

19 (C) Once the Earthmoving Administrator has determined that the application is
20 complete, sufficiency review will begin. The application will be forwarded to other
21 staff for their review. Initial staff review shall be completed within 60 working days
22 of when the application is deemed complete unless review of the application by a
23 consultant is necessary. If outside review of the application is required, 120
24 working days may be allowed to complete the initial review.

25 (D) The applicant is responsible for providing the county with all necessary information.
26 The Earthmoving Administrator shall provide the applicant with written notice or
27 notices of insufficiencies with the application when the initial staff review period is
28 complete. The failure of the Earthmoving Administrator to mention insufficiencies
29 shall not affect the county's right to require that the insufficiencies be addressed by
30 the applicant when noticed.

31 i) Staff may cease review of the application until such time as an identified
32 insufficiency has been addressed by the applicant.

33 ii) If the applicant submits information to address an insufficiency, the County
34 shall inform the applicant within 60 working days if the information is
35 adequate to address the issue in question, unless such information needs to
36 be reviewed by a consultant. If a consultant must review the information, 120
37 working days will be allowed for the review.

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1 (E) When the Earthmoving Administrator determines that the applicant has provided
2 information to address all issues identified during staff review, the Earthmoving
3 Administrator will finalize a Master Report, which shall include findings related to
4 consistency with the Comprehensive Plan, this Article, and the Code of Laws and
5 Ordinances of Charlotte County, Florida, and will provide an approval or denial of
6 the application.

7 i) In the event of an approval, the Earthmoving Administrator may require
8 special conditions to be placed on the operation.

9 a) The applicant shall satisfy any outstanding requirements.

10 b) A permit shall be issued. The permit holder and the lot owner, if not
11 the same, shall be responsible for complying with all regulations and
12 conditions of the permit and the Code of Laws and Ordinances of
13 Charlotte County, Florida.

14 c) The permit shall be posted at the site throughout the term of the
15 excavation.

16 ii) In the event of a denial, the applicant may appeal the denial to a Hearing
17 Examiner. The applicant shall indicate the decision to appeal the denial in
18 writing to the Earthmoving Administrator within two months of the date of the
19 Master Report.

20 (F) If staff review time exceeds that allocated in this subsection, the total amount
21 exceeded shall be applied to extend the expiration date of the application.

22
23 **Section 3-5-472. Specific Earthmoving Permit Approvals.**

24 The Earthmoving Administrator shall decide if the application is consistent with the Comprehensive Plan, this
25 Article, and the Code of Laws and Ordinances of Charlotte County, Florida. The applicant has the burden of
26 establishing that all requirements have been met.

27
28 **Section 3-5-473. Specific Earthmoving Permit Appeal of a Decision.**

29 An applicant may appeal a decision of the Earthmoving Administrator to a Hearing Examiner.

30 (a) If the Hearing Examiner determines that the applicant has not met the burden of proof that the
31 application meets the requirements of the Comprehensive Plan, this Article, and the Code of Laws
32 and Ordinances of Charlotte County, Florida, the application shall be denied and such determination
33 shall be deemed final. Decisions of the Hearing Examiner may be appealed by filing a Petition for
34 Certiorari in the Circuit Court of the Twentieth Judicial Circuit in and for Charlotte County in
35 accordance with the Florida Rules of Appellate Procedure for the review of quasi-judicial decisions of
36 a local government entity.

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1 (b) If the Hearing Examiner determines that the application does meet the requirements of the
2 Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County, Florida,
3 the application shall be approved and such determination shall be deemed final. In this event:

4 (1) The applicant shall satisfy any outstanding requirements.

5 (2) A permit shall be issued. The permit holder and the lot owner, if not the same, shall be
6 responsible for complying with all regulations and conditions of the permit and the Code of
7 Laws and Ordinances of Charlotte County, Florida.

8 (3) The permit shall be posted at the site throughout the term of the excavation.

9
10 **Section 3-5-474. Variances to Earthmoving Standards.**

11 Variances to the standards may be requested for proposed operations. The request must be included in the
12 submitted application.

13 (a) Variance requests for Standard Earthmoving operations, as well as Lake Reconfiguration, Canal
14 Excavation, RLE, Stockpiling and Clean Fill earthmoving operations shall be granted or denied by the
15 Earthmoving Administrator.

16 (b) Variance requests for Ag Excavations and Commercial Excavations shall be granted or denied by a
17 Hearing Examiner.

18 (c) As a condition to any requested Earthmoving Variance, the applicant shall establish the following
19 prerequisites to the satisfaction of the Earthmoving Administrator or Hearing Examiner before
20 granting of the Variance:

21 (1) The variance requested is not contrary to the public interest or otherwise detrimental to the
22 public welfare.

23 (2) Strict adherence to the provisions of the standards would place an undue burden or hardship
24 upon the operation due to unique conditions of the site and that hardship was not caused
25 intentionally by an action of the applicant.

26 (3) The granting of a variance would not be injurious to or incompatible with contiguous uses or to
27 the surrounding neighborhood or to the environment and would not allow relaxation of State or
28 Federal regulations.

29 (4) The hardship or conditions cannot reasonably be corrected or avoided by the applicant, there is
30 no reasonable alternative, and the requested variance is the minimum modification of the
31 standard at issue that will afford relief.

32 (d) Expenses and other monetary considerations are not a basis for proving undue burden or hardship.

33 (e) The Earthmoving Administrator or Hearing Examiner may add such conditions as deemed necessary
34 in connection with the granting of any Earthmoving Variance.

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(f) The specifics of an approved Earthmoving Variance, along with any accompanying conditions, shall be listed on the permit.

Section 3-5-475. Earthmoving Permit Periods of Permit Validity.

(a) The term of a Standard Earthmoving Permit shall not exceed one year unless otherwise stated on the permit.

(b) The term of a Specific Earthmoving Permit shall commence upon the approval of the permit by the Earthmoving Administrator and will be valid for the following lengths of time:

(1) The term of Lake Reconfiguration, Canal Excavation, RLE, Stockpiling and Clean Fill permits shall not exceed five years.

(2) The term of Ag Excavation and Commercial Excavation permits shall not exceed 10 years.

Section 3-5-476. Earthmoving Permit Modifications to Approved Permits.

(a) Modifications to an approved permit are approved or denied by the Earthmoving Administrator. In order for any modification to be approved, the operation shall be in compliance with the standards, requirements, and conditions under which the permit was issued and all State and Federal permits shall be valid.

(1) Modifications to extend the period of permit validity shall comply with the following:

(A) For a Standard Earthmoving permit as well as a Lake Reconfiguration, Canal Excavation, RLE, Stockpiling or Clean Fill permit, the request to extend the period of permit validity shall be submitted at least 20 working days prior to the permit expiration date. Requests for extension subsequent to this timeframe shall not be accepted. Permit extensions may be requested two times for two years each for a total of four years. Further extensions shall not be permitted.

(B) For a conforming Ag Excavation or Commercial Excavation, the request to extend the period of permit validity shall be submitted at least 40 working days prior to the permit expiration date. Requests for extension subsequent to this timeframe shall not be accepted. Permit extensions for these permits may be requested in ten year increments.

(C) Once a permit extension is granted, any new fees adopted by the Board prior to the renewal of the permit shall be complied with.

(D) The Earthmoving Administrator is not obligated to approve an extension if it is determined that conditions within the vicinity of the earthmoving operation have changed since the initial approval and the continuing operation of the earthmoving operation would be detrimental.

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1 (b) If a modification application is not approved within one year of the submittal date, it shall be
2 considered void.

3 (c) A denial of a modification request may be appealed to a Hearing Examiner.

4
5 **Section 3-5-477. Earthmoving Permit Inspections.**

6 (a) The Earthmoving Administrator, or designee, shall have the right to inspect the lands affected under
7 this Article. This right shall extend to lands already permitted to ensure compliance with this Article
8 and all conditions of the permit, as well as those lands where the applicant has submitted an
9 application for the issuance of a permit under this Article.

10 (b) Inspections of permitted activities shall be performed at least annually. An inspector shall attempt to
11 give at least 72 hours' advance notice and upon arrival the inspector shall attempt to contact
12 operating personnel. Inspections needed in response to a complaint require no advance notice.

13 (c) A copy of all required local, State and Federal permits and reports must be available for inspection on
14 site at all times.

15 (d) A copy of the site plan must be available for inspection on site at all times.

16
17 **Section 3-5-478. Specific Earthmoving Permit Annual Report.**

18 (a) An annual report shall be submitted to the Earthmoving Administrator for each Specific Earthmoving
19 Permit in the manner as required in the County's reporting form.

20 (b) The annual report shall be submitted, including any applicable fees, on or before December 31 of
21 each calendar year following the permit issuance date and shall include all activity through October 1
22 of that calendar year. For permits issued on or after October 1 of any calendar year, the Applicant
23 may submit the first annual report on the second December 31 following the permit issuance and on
24 December 31 of each calendar year thereafter.

25 (c) Failure to file the required annual report shall be grounds for suspension of the activity authorized by
26 the permit; however, an extension of time for filing may be granted by the Earthmoving Administrator
27 for reasonable cause upon a written request received by the Earthmoving Administrator prior to the
28 date that the report is due.

29
30 **Section 3-5-479. Earthmoving Permit Monitoring Reports**

31 Copies of all reports required by State or Federal agencies shall also be simultaneously submitted to the
32 Earthmoving Administrator.

33
34 **Section 3-5-480. Earthmoving Permit Violations**

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- 1 (a) Any person with any property interest in an earthmoving site as well as the permittee shall be
2 responsible for any violation of this Article.
- 3 (b) It is unlawful for any person to violate or fail to comply with the provisions of this Article, any
4 provisions adopted by reference herein, and of a permit issued pursuant to this Article. If at any time
5 during the term of a permit, the Earthmoving Administrator finds that the provisions of an Earthmoving
6 Permit, this Article, or other applicable law have been violated, the Earthmoving Administrator may
7 issue a stop work order and, if necessary, initiate a violation of the provisions of this Article before the
8 Code Enforcement Board. The stop work order shall remain in effect until the activity is brought into
9 compliance with the permit.
- 10 (d) The validity of a permit shall terminate if there is evidence that the permit is being used for or the land
11 is being prepared for a use other than what was stated in the application, or otherwise lawfully
12 approved by the County. Such evidence may include submittal of an application for a building permit,
13 a special exception, a rezone, a site plan, or similar item.
- 14 (e) If an earthmoving operation occurs without an approved, required permit, the violator(s) shall be
15 required to pay quadruple the regular fee for the application appropriate for that activity, in addition to
16 any code violation fees. The County reserves the right to deny the application and require the lot
17 owner to restore the lot to its previous condition.

18
19 **Section 3-5-481. Definitions**

20 Agriculture means the science and art of production of plants and animals useful to humans, including to a
21 variable extent the preparation of these products for human use and their disposal by marketing or
22 otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry,
23 bees, and any and all forms of farm products and farm production.

24 Confining layer means the impermeable stratum confining an aquifer.

25 Cumulative or cumulative impact means the total impact that results from a proposed earthmoving operation
26 when added to the impacts of other past, present, and reasonably foreseeable commercial or residential
27 development activity.

28 Depth means the vertical distance between existing grade and the bottom of an excavation.

29 Ditch means a linear trench not exceeding 7 feet in depth as measured from natural grade and 20 feet in
30 width.

31 Dwelling unit means a structure or portion thereof that is used exclusively for human habitation including
32 living, cooking, and sanitary facilities.

33 Earthmoving means any and all activities resulting in the repositioning of earth and the transporting and
34 installing of earth.

35 Engineer means a professional engineer registered and certified to practice in the State of Florida who is
36 retained by the permittee, or an agent of the permittee.

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1 Excavation means the removal of earth, an all-inclusive term, below the existing grade.

2 Excavation footprint means the area that is to be excavated up to top of bank.

3 Fee resolution means a resolution passed by the Board of County Commissioners that sets forth fees, bond
4 amounts, performance assurance requirements and other amounts payable by an applicant and
5 permittee.

6 Fill means the manmade installation or deposition of deposits of earth, sand, gravel, shell or other approved
7 materials to increase the vertical or horizontal extent of land.

8 Filling means the act of placing fill on land.

9 Grading means leveling, smoothing, and reshaping the ground surface to a level base or specified slope,
10 such as for construction work for a building foundation, the base course for a road, landscape and garden
11 improvements, or surface drainage.

12 Haul route means paved or unpaved roads within and outside the site that the permit specifies can be utilized
13 to transport materials to an on-site or off-site destination. The terminus of the haul route shall be the
14 nearest state maintained road.

15 Lake means a body of standing water occupying a natural basin or manmade depression in the earth's
16 surface. The term does not include stormwater ponds.

17 Littoral zone or shelf means the near shore area of a water body where sunlight penetrates all the way to the
18 sediment and allows aquatic plants to grow.

19 Lot means a designated parcel, tract, or area of land established by plat, subdivision, or as otherwise
20 permitted by law, and recorded in the public records of Charlotte County, Florida, to be separately owned,
21 used, developed, or built upon. For the purpose of this Article, a lot is created on such date that a deed
22 for the lot is lawfully first recorded in the public records of the County or the date that a plat has been
23 lawfully recorded in the public records of the County and the lot is a part of the plat.

24 Lot owner means a person or persons who own the land that is the subject of the earthmoving activity.

25 Maintenance dredging means the excavation of sediments or other materials from presently existing and
26 functional channels, ditches, canals, lakes, impoundments or other waterways of artificial construction to
27 original design elevations.

28 Natural grade shall have two meanings depending on the condition of the lot. Natural grade for a lot
29 developed with a structure where fill was required in order to raise the lot elevation is the grade of the lot
30 after the construction is complete. Natural grade for all other lots means the elevation of the original or
31 undisturbed natural surface of the ground as of 1980.

32 PALR means Performance Assurance for Land Reclamation

33 Site means the portion of a lot that is used for any activity associated with an earthmoving operation.

34 Sediment barrier shall mean a physical barrier through which water readily passes and that functions to trap
35 or prevent the passage of sediments suspended within the transmitted water.

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Topsoil shall mean those soils classified as the upper part of the soil which are the most favorable material for plant growth, ordinarily rich in organic matter, and are used to top dress roads, lawns, and land affected by mining or development.

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