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**Sec. 3-5-470. - Short title.**

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

(Ord. No. 2007-054, § 1, 7-17-07)

**Sec. 3-5-471. - Declaration of intent and purposes.**

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

(Ord. No. 2007-054, § 1, 7-17-07)

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

Unless specifically defined below or within the latest edition of *The Latest Illustrated Book of Development Definitions* published by the Center for Urban Policy Research, words and phrases used in

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this article shall be ascribed a meaning which they have in common usage and which gives this article its most reasonable application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Excavation administrator* means the director of growth management or his/her designee.

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

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

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

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

*FDOT* means the Florida Department of Transportation.

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

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

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

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

*Groundwater* means water beneath the surface of the ground.

*Growth management department* means the county's department that processes applications under this article.

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

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

*Hearing examiner* means an individual selected pursuant to [section 3-5-488](#) to adjudicate preliminary applications at preliminary hearings and final applications at final hearings.

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

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

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

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

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

*NGVD* means the National Geodetic Vertical Datum.

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

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

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

*Non-administrative permit amendment* means a permit amendment that changes a specific permit condition(s).

*Administrative permit amendment* means a permit amendment that does not change a specific permit condition(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Operating days and times.
- (2) Permit duration.
- (3) Quantity of material to be excavated.
- (4) Maximum depth of excavation.
- (5) Blasting and rock crushing restrictions.
- (6) Any additional conditions or stipulations imposed by the excavation administrator or the hearing examiner.

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

*Water management district* means the South Florida Water Management District or the Southwest Florida Water Management District, as applicable.

*Water table* means the top of the saturated zone of the surficial aquifer.

(Ord. No. 2007-054, § 1, 7-17-07; Ord. No. 2007-091, § 1, 12-11-07; Ord. No. 2009-040, § 1, 9-15-09)

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

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

(Ord. No. 2007-054, § 1, 7-17-07)

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

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

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

(Ord. No. 2007-054, § 1, 7-17-07; Ord. No. 2007-091, § 2, 12-11-07)

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

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

- (a) The installation of utilities;
- (b) The construction of foundations for any building or structure provided that a building permit has been issued;

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- (c) Excavations relating to the accessory use of land and designed to be filled upon completion (e.g., graves, septic tanks, etc.);
- (d) Swimming pools;
- (e) Maintenance dredging of lakes or canals; or
- (f) Insignificant excavations directly related to agricultural uses (e.g., ditches, livestock water holes, fish and alligator ponds, etc.); provided that:
  - (1) The land is zoned agricultural, agricultural estates or residential estates;
  - (2) The design otherwise meets the standards required for group I excavations;
  - (3) For all excavations other than ditches, but inclusive of all previous excavations on the site, the surface area of the excavation does not exceed twenty (20) percent of the property or five (5) acres, whichever is less, and the depth does not exceed twelve (12) feet. Excavations which are larger than five (5) acres and/or deeper than twelve (12) feet shall require permitting as a group I, II, III or IV excavation. However, agricultural excavations may exceed twelve (12) feet in depth if consistent with an approved Agricultural Ground and Surface Water Management (AGSWM) project from a water management district; and,
  - (4) All excavated material remains on site.
- (g) Stormwater retention/detention ponds otherwise approved by the county not exceeding twenty (20) percent of the site area or three (3) acres, and for which the depth does not exceed twelve (12) feet, slopes are graded at 6:1 or flatter to a depth of no less than five (5) feet below the mean water table, and all excavated material remains on-site.
- (h) Pursuant to a reclamation plan submitted with an application, areas constituting the littoral zone, beginning at the littoral shelf, detailed by applicable water management district permit(s), and ending at the top bank, shall not be taken into account for purposes of determining an excavation perimeter, provided no commercial excavations occur within said areas.
- (i) Excavation or earthmoving incidental to public roadway construction provided that all other required permits, including stormwater, are obtained.  
(Ord. No. 2007-054, § 1, 7-17-07; Ord. No. 2009-040, § 2, 9-15-09; Ord. No. 2010-026, § 1, 4-20-10)

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

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

- (a) Excavation operations shall not have an adverse impact on the quality or quantity of groundwater or surface water of surrounding properties. Applicants must ensure the proposed operations meet all standards of the health department and the applicable water management district.
- (b) The excavation administrator may require that the de-watering proposed in the application be analyzed by conducting an in-place field permeability test (horizontal) at one or more locations representative of the entire section of the aquifer to be de-watered. Necessary permeability tests may include but are not limited to: Field Hydraulic Conductivity Test-Augur 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 test methods may be used subject to prior approval by the excavation administrator. Results of testing and impact analysis using the data generated must be certified by an engineer or geologist registered by the State of Florida. Results shall be submitted with

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the application. In no case shall the excavation be allowed deeper than two (2) feet above the confining layer as determined and certified by an engineer or geologist.

- (c) 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 reviewing and permitting agencies. Stormwater may be discharged into the excavated area if it is included in a stormwater plan submitted by the applicant and approved by the excavation administrator, and all appropriate federal, state, and local permits have been obtained.
- (d) The standard slope, for all groups except group IV, for the side of an excavation shall be no steeper than one (1) foot vertical drop for each six (6) feet of horizontal distance measured from the edge of the excavation at existing grade seasonal high water table to a depth of no less than five (5) feet below the mean water table. The slope for group IV shall be no steeper than one (1) foot vertical drop for every four (4) feet of horizontal span. Below a depth of five (5) feet from the mean water table, the grade may not exceed a drop of two (2) feet horizontal to one (1) foot vertical for all groups. If the applicant desires a slope greater than the standard described above, then the applicant shall specify this in the application along with a justification for the deviation from the standard, according to the variance procedures set out in this article.
- (e) The excavation shall be operated in such a manner that dust emissions are minimized. Unpaved roads shall require regular watering or other treatments required by the county to minimize dust emissions. The excavation administrator may halt the excavation operation if, in the determination of the excavation administrator, dust emissions constitute a public nuisance.
- (f) Burning or incineration associated with an excavation will require permits in accordance with Charlotte County law and applicable federal and state law.
- (g) Asphalt aprons are required for all excavations from which material is excavated and transported onto any public road. Asphalt aprons shall be built according to the specifications for a Type II Turnout as set forth by Florida Department of Transportation (FDOT) Standard Sheet #516, as amended, or as otherwise approved by the county engineer.
- (h) Excavation activity shall be conducted between the hours of 7:00 a.m. and 6:00 p.m. on Monday through Friday and between the hours of 7:00 a.m. and 12:00 p.m. on Saturday, unless otherwise approved by the hearing examiner.
- (i) No excavation, except for ditches permitted by the applicable water management district, is permitted within twenty-five (25) feet of the boundary line of a drainage or utility easement. A waiver may be granted with the consent of the easement holder.
- (j) It shall be unlawful to place any litter (as defined in section 1-12-4 of this Code), solid materials, organic materials, or solid or hazardous waste (as defined in section 17-701.200 (73), Florida Administrative Code [F.A.C.]) within any excavation that has not been previously permitted as a solid waste disposal site by the State of Florida and Charlotte County. Clean gravel, sand, rock, clay and clean debris (as defined in section 17-701.200 (11), F.A.C.) may be placed within an excavation site pursuant to a valid and current reclamation plan approved by Charlotte County, provided a quarterly report is provided to the Charlotte County Department of Environmental Services listing the type, tonnage and origin of the fill. Any person with any property interest in the excavation location shall be responsible for any violation of this subparagraph. Any person doing the actual depositing of the materials within the excavation shall also be responsible for any violation of these provisions.
- (k) The permittee shall comply with all applicable requirements of article I, chapter 3-3, of this Code.

- (l) Generators and pumps shall be well muffled, isolated by sound deadening materials and located such that noise does not exceed the limits set forth in this Code or by state statute.
- (m) The excavation administrator may require the applicant to utilize aesthetic features to enhance the site such as fences, landscaped screening buffers or earthen berms.
- (n) For the permit duration, the excavation administrator where appropriate and in the interest of public safety may require the applicant to secure the excavation. The excavation may be secured with a fence around the excavated area, by ensuring all access points to the excavation site be secured when no activity is occurring to prevent unauthorized access, or by such other means as agreed to by the excavation administrator and the applicant.
- (o) Applicants engaged in off-site transport of excavated material shall provide for an inspection area proximate to the excavation site egress point and provide access to FDOT and other law enforcement personnel granting on-site inspection authority during, and up to one-half (1/2) hour before and after, operating hours.

(Ord. No. 2007-054, § 1, 7-17-07)

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

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

- (a) Group I excavations are permissible in any zoning district.
- (b) The term of a group I permit shall not exceed two (2) years.
- (c) 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.
  - (2) Fifty (50) feet of any side or rear property line of abutting property located in areas zoned other than residential.
  - (3) One hundred fifty (150) feet of residential or institutional structures.
  - (4) Twenty-five (25) feet of any side or rear property line of abutting property located in areas zoned residential.
- (d) In no case shall a group I excavation exceed a depth of twenty (20) feet.

(Ord. No. 2007-054, § 1, 7-17-07)

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

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

- (a) Group II excavations are permissible in any zoning district.
- (b) The term of a group II permit shall not exceed three (3) years.
- (c) No excavation, except for ditches permitted by the applicable water management district, is permitted within:
  - (1) One hundred (100) feet of any public or private right-of-way.
  - (2) Twenty-five (25) feet of the side or rear property line of abutting property located in areas zoned other than residential.
  - (3) One hundred fifty (150) feet of residential or institutional structures.
  - (4) Seventy-five (75) feet of any side or rear property line of abutting property located in areas zoned residential.

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- (d) The footprint of a group II excavation shall not exceed twenty-five (25) percent of the area of the site. A waiver from the footprint limitation may be approved by the hearing examiner only upon a showing that:
- (1) Adherence would conflict with applicable state or federal laws or regulations; or
  - (2) Upon the recording of a final plat for the excavation site in accordance with article II of chapter 3-7 of this Code; or
  - (3) The project has obtained final DRC approval for an activity other than one capable of receiving a final plat and the hearing examiner finds sufficient assurances that the excavation is in furtherance of a legitimate development activity other than commercial excavation and places appropriate conditions on the excavation approval to insure the underlying development will be completed.

(Ord. No. 2007-054, § 1, 7-17-07)

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

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

- (a) Group III excavations are permissible only in an excavation and mining (EM) zoning district as defined in chapter 3-9 of this Code.
- (b) The term of a group III permit shall not exceed ten (10) years.
- (c) No excavation, except for ditches permitted by the applicable water management district, is permitted within:
  - (1) One hundred (100) feet of any public or private right-of-way.
  - (2) Twenty-five (25) feet of the side or rear property line of abutting property located in areas zoned other than residential.
  - (3) One thousand (1000) feet of residential or institutional structures.
    - (A) A waiver from this setback may be permitted by the hearing examiner upon a showing that the occupants of the affected structures consent to a reduced setback.
  - (4) Seventy-five (75) feet of any side or rear property line of abutting property located in areas zoned residential.
- (d) All loads of material leaving the excavation site must be weighed on-site by FDOT approved scales and each driver given a weight ticket for the correct weight of the load.

(Ord. No. 2007-054, § 1, 7-17-07; Ord. No. 2007-091, § 3, 12-11-07)

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

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

- (a) Group IV excavations are permissible only in agriculture zoning districts (AE and AG) as defined in chapter 3-9 of this Code.
- (b) The term of a group IV permit shall not exceed five (5) years. Prior to expiration, the permit holder may request a one-time two-year extension from the excavation administrator upon a showing of good cause and continued participation in a qualified agricultural program without having to comply with the procedures of section 3-5-454 of this Code.
- (c) No excavation, except for ditches permitted by the applicable water management district, is permitted within:
  - (1) One hundred (100) feet of any public or private right-of-way.

- (2) Twenty-five (25) feet of the side or rear property line of abutting property located in areas zoned other than residential.
- (3) One hundred fifty (150) feet of residential or institutional structures.
- (4) Seventy-five (75) feet of any side or rear property line of abutting property located in areas zoned residential.
- (d) The maximum excavation area shall be the lesser of ten (10) percent of the irrigated acreage or one hundred (100) acres.

(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) The excavation administrator shall review the proposed haul route(s), according to the following criteria and considerations:
  - (1) To the greatest extent possible, the haul route(s) shall abut or lie within the excavation site.
  - (2) The haul route(s) shall not have undue impact on persons and properties along or in proximity to the haul route(s).
  - (3) It shall be the responsibility of the permittee to mitigate those impacts on the haul route(s) arising from activities authorized under the permit. Required mitigation measures shall be determined by the excavation administrator on a case-by-case basis, in recognition of the varying circumstances found in each application and may include any or all of the following:
    - (A) Watering and other dust control measures.
    - (B) Cleanup of materials overspills.
    - (C) Maintenance grading of unsurfaced roads; shoulder grading and restoration.
    - (D) Pavement patching.
    - (E) Pavement maintenance, including resurfacing.
    - (F) Pavement reconstruction.
    - (G) Traffic safety improvements such as signing, striping, barrier rails, turn and/or acceleration lanes with tapers, all meeting American Association of State Highway and Transportation Officials' Standards.
- (b) The excavation administrator shall obtain the assistance of the county engineer relative to traffic safety, pavement conditions, and other technical aspects of the review of the proposed haul route(s). Subsequent to the review, the excavation administrator shall recommend that the haul route(s) be approved or disapproved.
- (c) Applicants proposing to haul ten thousand (10,000) or more cubic yards of material on any road under county jurisdiction shall meet with the county engineer to discuss the proposed haul route(s) and associated traffic and pavement impacts. The applicant must provide a traffic analysis and/or pavement analysis. The county engineer shall determine the sufficiency and specify the necessary scope(s) thereof. A permit shall not be issued until said analysis(es) is approved by the county engineer, and the provisions of the permit include explicit measures for mitigation of said impacts.
  - (1) A traffic impact analysis shall address the trip generation of the proposed facility; ingress, egress, and access control to the site; and will address the impact(s) direct, indirect and cumulative of the proposed facility, including anticipated increases in road maintenance requirements, and impacts to the levels of service of affected roadways.
- (d) No permit may be issued for an excavation which proposes to utilize, as part of a haul route(s), roads which are not publicly maintained, unless approval is obtained from each party responsible for maintenance of such roads. Any haul route(s), which contains unpaved segments, shall be maintained by the permittee in a condition satisfactory to the county, including controlling dust

generated by the trucks engaged in earthmoving within five hundred (500) feet of any residential structure. Traffic control signs shall be provided where necessary, including but not limited to, stop, traffic, and entrances, which shall comply with the Manual of Uniform Traffic Control Devices.

- (e) Roadway service life, reduction due to earthmoving shall be mitigated on certain roads along the haul route(s), regardless of whether the origin of the material being hauled is within or without Charlotte County.
- (f) Mitigation is required for any damage caused by the permittee on county-maintained roads. A RSLR fee shall be calculated pursuant to the fee resolution.

(Ord. No. 2007-054, § 1, 7-17-07)

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

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

- (a) All permit applications shall include:
  - (1) A completed application form and application fee;
  - (2) A copy of the soil boring report for excavations greater than twelve (12) feet deep. If the depth of the excavation is twelve (12) feet or less, then no soil borings are required. There shall be a minimum of two (2) borings per excavation or one (1) boring per ten (10) acres of the excavation area, whichever is greater. All borings are to be performed through a soil-testing laboratory. Copies of results, signed and sealed by an engineer or geologist, must be provided;
  - (3) Five (5) copies; signed and sealed by an engineer, of the proposed reclamation plan, when required. The proposed reclamation plan shall be prepared in accordance with this article. If sheet sizes are larger than eleven (11) inches by seventeen (17), applicant shall furnish county with one (1) complete copy that has been reduced to eleven (11) by seventeen (17) inches;
  - (4) Five (5) copies of the site plan, signed and sealed by an engineer, showing the plan view and cross-section of the excavation project, along with the following supplemental information:
    - (A) The ownership and boundary lines of the property, including bearings and distances;
    - (B) A topographic survey clearly showing existing and proposed grades, all of which shall be related to the National Geodetic Vertical Datum (NGVD);
    - (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 (½) 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;

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- (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;
- (W) The technique(s), which will be used to vegetate littoral zone, if littoral zones are to be included in the excavation;
- (X) A discussion of quality of life issues, in particular, the affect of the proposed excavation upon the health, safety and welfare of residents within one-half ( $\frac{1}{2}$ ) mile (two thousand six hundred forty (2,640) feet) of the site;
- (Y) A statement as to the extent blasting is planned and the expected impact on the area, i.e., dust, wind, noise, vibrations, etc.
- (Z) A statement as to the extent rock crushing is planned and expected impact on the area, i.e., dust, noise, vibrations, etc.
- (AA) Aerial photos of the excavation site;
- (BB) Copies of all information, documents, and reports for state permit acquisition and monitoring;
- (CC) A reclamation plan as provided in this article;
- (DD) A detailed description of any required on-site FDOT inspection areas, delineating both their location and access route(s);
- (EE) Indicate and detail the location of all proposed spoil piles and stockpiles of excavated material on site;

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- (FF) Provide an excavation site location map with the location of all known well fields and well field protection zones within a five-mile radius superimposed;
  - (GG) The location of all monitoring and test wells required on the site;
  - (HH) The location of all staff gauges required on site;
  - (II) Any other specific information requested by the excavation administrator to better define, clarify, or assist the excavation administrator in evaluating whether or not the application is consistent with the intent and purposes of this article, in light of the uniqueness or complexity of the proposed excavation project.
- (b) If sheet sizes of any application materials are larger than eleven (11) by seventeen (17) inches, applicant shall furnish county with one (1) complete copy that has been reduced to eleven (11) by seventeen (17) inches.

(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) A reclamation plan shall be submitted with an application and shall:
- (1) Provide for reclamation on a periodic basis. The excavation administrator shall determine the stages or intervals at which the various stages of reclamation must be commenced and completed.
  - (2) Describe the manner in which restructuring, reshaping and/or revegetation will be accomplished, and show final grades of the site.
  - (3) Be drawn to a reasonable scale depending upon the size of the project as specified by the excavation administrator and contain a north arrow.
  - (4) Show existing natural and manmade features, including watercourses, 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.
  - (5) Show all areas to be reclaimed by depicting and/or describing what manmade and natural features will exist when the reclamation plan is completed. This requirement includes the depiction of mitigation or preservation areas established for wildlife species.
  - (6) Depict at least two (2) typical cross-sections with elevations, generally oriented north to south and east to west, showing areas to be filled, back-filled, reconstructed and/or reshaped. Water elevations shall also be shown.
  - (7) Depict any area to become a lake.
  - (8) Depict any required fences, walls, or vegetative buffers, including at least one cross-section, in addition:
    - (A) Document the type and location of vegetation to be preserved or planted including, but not limited to, grass(es), tree(s) and shrubs; and
    - (B) Depict the required vegetative buffer required along the perimeter of any group III excavated lake, and any large scale group IV excavated lake that ceases to be utilized for agricultural irrigation for more than one (1) year or immediately upon change of use. Such buffer shall utilize the following standards:
      - i) Required plant units/100 feet (Per perimeter of the reclaimed lake) shall be three (3) canopy trees, one (1) accent/understory trees and five (5) shrubs.
      - ii) The buffer shall be minimum width of twenty (20) feet.
      - iii) Trees for use within the buffer include:

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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 elliottii var. densa	Canopy
Florida Privet	Forestiera segregate	Understory
Red Cedar	Juniperus virginiana	Understory
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

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.

- 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.
- 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.

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- 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.
- (Ord. No. 2007-054, § 1, 7-17-07; Ord. No. 2010-026, § 2, 4-20-10)

**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.
  - (4) Air quality, including dust from any excavation, blasting, stockpiling, sorting, vehicular circulation, or other activity; any exhaust or other emissions from equipment associated with the excavation.
  - (5) Hazardous materials and other potential contaminants, including any naturally occurring elements which could become potentially harmful to the public if concentrated by any process

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associated with the proposed excavation, including but not limited to dewatering, settling, stockpiling, sorting, and other activities, with particular attention to radiation.

- (6) Qualifications and calculations, including all calculations, assumptions, survey methodologies, and other technical components of the statement; the qualifications of every person involved in preparing the statement, and which portion(s) they were involved in.
- (7) Any other information required by the excavation administrator due to unique circumstances.

(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) Applicants shall submit a completed group I application form to the growth management department together with all supporting documentation.
- (b) The excavation administrator shall have five (5) working days to review the application for completeness and to notify the applicant, in writing, of any deficiencies. If the excavation administrator deems the application to be incomplete or otherwise deficient, all review of the application shall cease until such time as the application is supplemented by the applicant and deemed complete by the excavation administrator.
- (c) Within five (5) working days of the determination that the application is complete, the excavation administrator shall forward one (1) copy of the application to the applicable county departments for their review in regard to compliance with this article, other applicable laws and sound engineering and planning practices.
- (d) Within fifteen (15) working days of receipt of the complete application, said departments/divisions shall conduct their reviews and provide the excavation administrator with reports containing their comments and recommendations concerning the contents of the application, whether it should be approved or not approved as submitted and specific permit conditions deemed necessary to comply with the provisions of this article and other applicable law.
- (e) Upon receipt of the aforementioned reports, the excavation administrator shall carry out the following procedures in respect to the application:
  - (1) The excavation administrator shall prepare a master report of the departmental reviews and the applicant shall be notified of the excavation administrator's decision to approve or disapprove the application within seven (7) working days.
  - (2) In the event the excavation administrator approves the application, the applicant shall submit a performance assurance for land reclamation prior to issuance of the permit. The performance assurance shall be calculated according to the procedures set forth in the fee resolution.
- (f) Upon the applicant's satisfaction of all applicable requirements, the group I permit shall be issued. The permit shall set forth all specific permit conditions.
- (g) The permit shall be posted at the excavation site throughout the term of the excavation.
- (h) In the event that the application is denied, the excavation administrator shall not issue a group I permit to the applicant. The applicant may supplement the application or work with the excavation administrator to correct any deficiencies.
- (i) If an application for a group I permit is not approved within one (1) year of the date that it was submitted, the application shall be void and the applicant must submit a new application for the proposed group I permit. An extension may be granted by the excavation administrator, at his discretion, if the applicant can demonstrate that the delay was due primarily to the fault of other permitting agencies and not to any fault of the applicant.

(Ord. No. 2007-054, § 1, 7-17-07; Ord. No. 2009-040, § 3, 9-15-09)

**Sec. 3-5-486. - Group II and group III permitting processes.**

(a) *Preliminary application process.*

- (1) Applicants shall submit a complete application to the growth management department together with all supporting documentation.
- (2) The excavation administrator shall forward copies of the application to the applicable county departments for review. The departments shall employ sound scientific, engineering and planning practices to determine if the proposed excavation meets the requirements of the preliminary application process.
- (3) The applicant shall be responsible for providing the county with all information necessary for the preliminary application process. In the event that the excavation administrator or the departments deem the application, the supporting documentation or any portion thereof to be insufficient, the excavation administrator shall provide the applicant with written notice or notices of such insufficiencies as soon as practicable. The failure of the excavation administrator to mention any insufficiencies in any notice shall not affect the county's right to require that the unstated insufficiencies be addressed by the applicant. The excavation administrator shall provide the applicant with written notice of further insufficiencies as soon as practicable.
  - (A) The county, at its option, may cease all or any portion of the preliminary application process until such time as all insufficiencies are addressed to the county's satisfaction.
  - (B) If the applicant refuses or is unable to address the insufficiencies to the county's satisfaction, the applicant may request and receive a preliminary hearing on the application as presented.
- (4) Within fifteen (15) working days after receiving all information necessary for the preliminary application process, the departments shall complete their review and provide the excavation administrator with a report containing its comments and recommendations as to the proposed excavation's compliance with the requirements of the preliminary application process.
- (5) The excavation administrator shall provide the applicant with a master report or a summary thereof within fifteen (15) working days of the excavation administrator's receipt of the departmental reports.
- (6) If the excavation administrator determines that the excavation meets the requirements of the preliminary application process, the excavation administrator shall schedule a preliminary hearing on the application.
- (7) Upon the applicant's receipt of a master report or summary thereof wherein excavation administrator concludes that the excavation does not meet the requirements of the preliminary application process, the applicant may choose to provide additional information to the excavation administrator or to proceed with the preliminary hearing. In the latter event, the applicant must provide the excavation administrator with a written request for a preliminary hearing. A preliminary hearing will not be scheduled until such time as the excavation administrator determines that the preliminary final application process requirements have been met or the applicant provides the excavation administrator with a written request for a preliminary hearing.
- (8) If the hearing examiner determines that the application does not meet the requirements of the preliminary application process, the applicant may submit additional information and re-initiate the preliminary application process one (1) time without paying an additional application fee.
- (9) If the hearing examiner determines that an application meets the requirements of the preliminary application process, the applicant shall have the right to proceed with the final

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application process. A favorable ruling by the hearing examiner constitutes a conditional approval of the application, subject only to the applicant's compliance with the balance of the requirements of this article and other applicable law necessary for the issuance of the permit.

(b) *Final application process.*

- (1) It shall be the responsibility of the applicant to notify the excavation administrator in writing when the applicant is ready to proceed with the final application process. For purposes of the final application process, the excavation administrator shall not deem an application complete until all requirements of this article and other applicable law have been met and all documentation required by applicable law have been received by the excavation administrator.
- (2) The applicant shall be responsible for providing the county with all information necessary for the final application process. In the event that the excavation administrator or the departments deem the application, the supporting documentation or any portion thereof to be insufficient, the excavation administrator shall provide the applicant with written notice or notices of such insufficiencies as soon as practicable. The failure of the excavation administrator to mention any insufficiencies in any notice shall not affect the county's right to require that the unstated insufficiencies be addressed by the applicant. The excavation administrator shall provide the applicant with written notice of further insufficiencies as soon as practicable.
  - (A) The county, at its option, may cease all or any portion of the final application process until such time as all insufficiencies are addressed to the county's satisfaction.
  - (B) If the applicant refuses or is unable to address the insufficiencies to the county's satisfaction, the applicant may request and receive a final hearing on the application as presented.
- (3) Within fifteen (15) working days after receiving all information necessary for the final application process, the departments shall complete their review and provide the excavation administrator with a report containing comments and recommendations as to whether the proposed excavation meets the requirements of the final application process.
- (4) The excavation administrator shall provide the applicant with a master report or a summary thereof within fifteen (15) working days of the excavation administrator's receipt of the departmental reports.
- (5) If the excavation administrator determines that the excavation meets the requirements of the final application process, the excavation administrator shall schedule a final hearing on the application.
- (6) If the excavation administrator determines that the excavation does not meet the requirements of the final application process, the applicant may choose to provide additional information to the excavation administrator or to proceed with the final hearing. In the latter event, the applicant must provide the excavation administrator with a written request for a final hearing. A final hearing will not be scheduled until such time as the excavation administrator determines that the final application process requirements have been met or the applicant provides the excavation administrator with a written request for a final hearing.
- (7) In the event that the hearing examiner determines that an application does not meet the requirements of the final application process, the excavation administrator shall not issue a permit to the applicant. The applicant may seek a review of the hearing examiner's decision by filing a writ of certiorari in the circuit court.
- (8) In the event that the hearing examiner determines that an application meets the requirements of the final application process, the permit shall be issued upon the applicant's satisfaction of all requirements set forth in this article.

- (9) 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) below, the land reclamation performance assurance shall remain in effect throughout the duration of the permit term, plus six (6) months.
  - (B) A performance assurance for land reclamation may expire prior to the duration of the permit term plus six (6) months provided the county is given a successor performance assurance in conjunction with the annual report and as-built certification. In such event, the effective date of each successor performance assurance shall thereafter fall on January 1 and the expiration date of each successor performance assurance shall thereafter fall on December 31.
  - (C) 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.
- (10) 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, 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.
- (11) 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. Group II and III permits shall set forth all specific permit conditions.
- (12) The permit must be conspicuously posted at the excavation site throughout the term of the excavation.
- (13) If an application for a group II or a group III 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 for the proposed group II or a group III permit. 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.

(Ord. No. 2007-054, § 1, 7-17-07; Ord. No. 2009-040, § 5, 9-15-09)

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

(a) *Small scale permit process.*

- (1) This process shall only apply to excavations in which all of the following conditions have been met:
- (A) The proposed excavation has a footprint of no greater than fifteen (15) acres, unless all excavated material remains on-site.
  - (B) The proposed excavation is at least twenty-five (25) feet from the side or rear property line of abutting property.
  - (C) The proposed excavation is at least one thousand (1,000) feet from any residential or institutional structures, unless a waiver is granted by the excavation administrator upon a showing that the occupants of the affected structures consent to a reduced setback.
- (2) Applicants shall submit a completed group IV application to the growth management department together with all supporting documentation.
- (3) The excavation administrator shall have five (5) working days to review the application for completeness and to notify the applicant, in writing, of any deficiencies. If the excavation

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administrator deems the application to be incomplete or otherwise deficient, all review of the application shall cease until such time as the application is supplemented by the applicant and deemed complete by the excavation administrator.

- (4) Within five (5) working days of the determination that the application is complete, the excavation administrator shall forward one (1) copy of the application to the applicable county departments for their review in regard to compliance with this article, other applicable laws and sound engineering and planning practices.
  - (5) Within fifteen (15) working days of receipt of the complete application, said departments/divisions shall conduct their reviews and provide the excavation administrator with reports containing their comments and recommendations concerning the contents of the application, whether it should be approved or not approved as submitted and specific permit conditions deemed necessary to comply with the provisions of this article and other applicable law.
  - (6) Upon receipt of the aforementioned reports, the excavation administrator shall carry out the following procedures in respect to the application:
    - (A) The excavation administrator shall prepare a master report of the departmental reviews and the applicant shall be notified of the excavation administrator's decision to approve or disapprove the application within seven (7) working days.
    - (B) In the event the excavation administrator approves the application, the applicant shall submit a performance assurance for land reclamation prior to issuance of the permit. The performance assurance shall be calculated according to the procedures set forth in the fee resolution.
  - (7) Upon the applicant's satisfaction of all applicable requirements, the group IV permit shall be issued. The permit shall set forth all specific permit conditions.
  - (8) The permit shall be posted at the excavation site throughout the term of the excavation.
  - (9) In the event that the application is denied, the excavation administrator shall not issue a group IV permit to the applicant. The applicant may supplement the application or work with the excavation administrator to correct any deficiencies. In the event the excavation administrator and the applicant cannot resolve any remaining issues, the applicant may request and receive a hearing on the application as presented.
  - (10) If an application for a group IV permit is not approved within one (1) year of the date that it was submitted, the application shall be void and the applicant must submit a new application for the proposed group IV permit. An extension may be granted by the excavation administrator, at his discretion, if the applicant can demonstrate that the delay was due primarily to the fault of other permitting agencies and not to any fault of the applicant.
- (b) *Large scale permit process.*
- (1) Applicants shall submit a complete application to the growth management department together with all supporting documentation. The excavation administrator shall not deem an application complete until all requirements of this article and other applicable law have been met and all documentation required by applicable law have been received by the excavation administrator.
  - (2) The excavation administrator shall forward copies of the application to the applicable county departments for review. The departments shall employ sound scientific, engineering and planning practices to determine if the proposed excavation meets the requirements of this article.
  - (3) The applicant shall be responsible for providing the county with all information necessary for the issuance of a permit. In the event that the excavation administrator or the departments deem

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the application, the supporting documentation or any portion thereof to be insufficient, the excavation administrator shall provide the applicant with written notice or notices of such insufficiencies as soon as practicable. The failure of the excavation administrator to mention any insufficiencies in any notice shall not affect the county's right to require that the unstated insufficiencies be addressed by the applicant. The excavation administrator shall provide the applicant with written notice of further insufficiencies as soon as practicable.

- (A) The county, at its option, may cease all or any portion of the permit process until such time as all insufficiencies are addressed to the county's satisfaction.
  - (B) If the applicant refuses or is unable to address the insufficiencies to the county's satisfaction, the applicant may request and receive a hearing on the application as presented.
- (4) Within fifteen (15) working days after receiving all information necessary for the issuance of a permit, the departments shall complete their review and provide the excavation administrator with a report containing its comments and recommendations as to the proposed excavation's compliance with the requirements of this article.
  - (5) The excavation administrator shall provide the applicant with a master report or a summary thereof within fifteen (15) working days of the excavation administrator's receipt of the departmental reports.
  - (6) If the excavation administrator determines that the excavation meets the requirements of this article, the excavation administrator shall schedule a hearing on the application. The applicant may proceed to a hearing while other required permits are pending, however the application shall not be deemed complete and the excavation administrator shall not issue a permit under this article until all other requisite permits are have been received.
  - (7) Upon the applicant's receipt of a master report or summary thereof wherein excavation administrator concludes that the excavation does not meet the requirements of this article, the applicant may choose to provide additional information to the excavation administrator or to proceed with the hearing. In the latter event, the applicant must provide the excavation administrator with a written request for a hearing. A hearing will not be scheduled until such time as the excavation administrator determines that the requirements of this article have been met or the applicant provides the excavation administrator with a written request for a hearing.
  - (8) If the hearing examiner determines that the application does not meet the requirements of this, the applicant may submit additional information and re-initiate the permitting process under this subsection one (1) time without paying an additional application fee.
  - (9) If the hearing examiner determines that an application meets the requirements of this article, the permit shall be issued contingent upon the applicant's satisfaction of all requirements set forth in this article. A favorable ruling by the hearing examiner constitutes a conditional approval of the application, subject only to the applicant's compliance with the balance of the requirements of this article and other applicable law necessary for the issuance of the permit.
  - (10) In the event that the hearing examiner determines that an application does not meet the requirements of this article, the excavation administrator shall not issue a permit to the applicant. The applicant may seek a review of the hearing examiner's decision by filing a writ of certiorari in the circuit court.
  - (11) The hearing examiner, in lieu of denial, may choose at the hearing to grant preliminary approval to the applicant if the hearing examiner determines that the remaining insufficiencies are readily addressable by the applicant and the applicant agrees to such appropriate conditions as the hearing examiner deems necessary to ensure consistency with this article. Preliminary approval

represents only a general acceptance of the application as presented and shall not be construed to authorize issuance of a permit, instead said approval places appropriate conditions on the applicant to ensure compliance with the remainder of this article and other applicable law necessary for the issuance of the permit. Preliminary approval shall be valid for a period of six (6) months from the date of the hearing in which it was made or two (2) years from the date the 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.

(Ord. No. 2007-054, § 1, 7-17-07; Ord. No. 2009-040, § 5, 9-15-09)

### **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.
- (c) In addition to the excavation administrator or his/her designee, representatives from the county engineer and county departments, whose comments contributed to the master report shall be present at both preliminary and final hearings to answer both the applicant and hearing examiner's questions unless given express permission to be excused by the excavation administrator which shall not be granted over the objection of the applicant.
- (d) The hearing examiner shall consider the substantial competent evidence presented by the applicant, the applicant's agents and consultants, county staff and the public together in deciding if the application is consistent with this article. The applicant will make the initial presentation before the hearing examiner. The applicant has the burden of establishing that all requirements of this article have been met. The applicant's presentation will be followed by the county's presentation. The county shall state whether the requirements for approval of the application, whether in whole or in part, have been met, and its reasons therefor.
- (e) As soon as practicable after each hearing, the hearing examiner shall file a report and notify the applicant of his or her findings.

(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) Variances to the provisions of this article shall be requested in the application. Variance requests for group I excavations shall be granted or denied by the excavation administrator in connection with the consideration of the application. Variance requests for group II, III and IV excavations shall be granted or denied by the hearing examiner in connection with the preliminary application process.
- (b) As a condition to any requested variance, the applicant must establish the following prerequisites to the satisfaction of the excavation administrator, in the case of a group I excavation and to the satisfaction of the hearing examiner, in the case of group II, III and IV excavations before the granting of a variance may be given:
  - (1) That:
    - (A) The variance requested is not contrary to the public interest or otherwise detrimental to the public welfare; and
    - (B) Strict adherence to the provisions of this article would place an undue burden or hardship upon the excavation operation due to unique conditions of the excavation site and that hardship was not caused intentionally by the action of the applicant; and
    - (C) The granting of a variance would not be injurious to or incompatible with contiguous uses or to the surrounding neighborhood; and
    - (D) The hardship or conditions cannot reasonably be corrected or avoided by the applicant, there is no reasonable alternative and the requested variance is the minimum modification of the regulation at issue that will afford relief.
  - (2) Or:
    - (A) That strict adherence to the requirements of this article would violate state or federal laws and/or regulations.

- (c) The excavation administrator or hearing examiner may add such conditions as deemed necessary in connection with the granting of any variance under this section to minimize any harmful effects created as a result of the variance.
- (d) Any variance granted, along with any accompanying conditions, shall be incorporated into the permit as a specific condition thereof.  
(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) If the permittee desires to transfer a permit, the prospective transferee shall be required to submit an application for the transfer to the excavation administrator. The prospective transferee shall be required to establish to the satisfaction of the excavation administrator that the excavation complies with all requirements applicable to the original permit and any amendments thereto. The prospective transferee shall also be required to pay all applicable fees, post the required performance assurances and otherwise comply with the terms of the fee resolution and this article. Upon the transfer of the permit, the permittee shall be bound by the terms of the permit and the development agreement.
- (b) A non-administrative permit amendment may only be obtained by submitting and obtaining the approval of a new application. An administrative permit amendment shall be processed by the excavation administrator without the need for a new application.
- (c) If an application for a transfer or an amendment is not approved within one (1) year of the date that it was submitted, the application shall be void and the Applicant must submit a new application for the proposed transfer or amendment.  
(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) An annual report of operations shall be submitted to the excavation administrator for each group II, III and IV excavation. An "as-built" certification by an engineer that the excavation has been conducted in accordance with the permit provisions, including the approved excavation plans, shall be submitted in conjunction with each annual report. Both documents shall be submitted on or before December 31 of each calendar year following the permit issuance date and shall include all activity through October 1 of that calendar year. For permits issued on or after October 1 of any calendar year, the Applicant may submit the first annual report on the second December 31 following the permit issuance and on December 31 of each calendar year thereafter.
- (b) Each report shall summarize the excavation and reclamation progress to date, identify lands planned for excavation during the next year, state the total amount in cubic yards of material excavated and total number of truckloads transporting excavated material leaving the site to date and the percentage of such excavated material in relation to the total amount of material permitted to be excavated, state the amount in cubic yards of material intended to be excavated in the next year and the percentage of such material in relation to the total amount permitted to be excavated. The report shall also verify compliance with all other conditions of other permitting authorities and shall note the expiration dates for all permits applicable to the excavation, earthmoving, and reclamation activities. Each report shall include a completed annual report checklist on a form provided by the county.
- (c) Failure to file the required annual report shall be grounds for suspension of the activities authorized by the permit; however, an extension of time for filing may be granted by the excavation administrator for reasonable cause upon a written request received by the excavation administrator prior to the date that the report is due.

(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) If at any time during the term of the permit the excavation administrator finds that the provisions of a permit, a development agreement, this article, or other applicable law have been violated, the excavation administrator may issue a stop work order. The stop work order shall remain in effect until the excavation and/or all other activities are brought into compliance with the permit, and in the event of damage to surrounding properties, all such damage has ceased and been repaired.
- (b) It is unlawful for any person to violate or fail to comply with the provisions of this article or any provisions adopted by reference herein. violations shall be enforced pursuant to applicable law.

(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) Where applicable to the purpose and scope of this article, the provisions of the Charlotte County Code Enforcement Board Ordinance, and the procedures contained therein are hereby adopted and incorporated into and made a part of reference. Violations of any provisions of this article shall be subject, but not limited to, the requirements and remedies of the Charlotte County Code Enforcement Board and/or the BCC pursuant to F.S. Ch. 162.
- (b) Where applicable, any person, firm or corporation violating any provisions of this article shall, upon conviction, be punished by a fine of up to five hundred dollars (\$500.00) and/or up to sixty (60) days imprisonment in the county jail, as provided by law for the violation of county ordinances. Each day of violations shall constitute a separate offense. In addition to the penalties provided for herein, the BCC is authorized to bring suit in any court of competent jurisdiction to restrain, enjoin or otherwise prevent violations of this article.
- (c) Any person violating any provisions of this article shall be liable for all costs incurred by the county in connection with enforcing this article including, without limitations, attorneys fees.

(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) *Determination of vested rights or denial of all economic use.*
  - (1) Nothing in this section shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:
    - (A) The property owner had a preliminary hearing scheduled prior to the effective date of this ordinance as amended; and
    - (B) The property owner has detrimentally relied, in good faith on chapter 3-5, article XXIII (Ord. No. 2003-003), by making substantial expenditures; and
    - (C) That it would be highly inequitable to deny the property owner the right to complete the development.
  - (2) Nothing in this section shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that no economic use can be made of the parcel.
  - (3) Any property owner claiming vested rights or a denial of all economic use under this section, must file an application with the county for a determination within thirty (30) days. The application shall be accompanied by an application fee of one thousand five hundred dollars (\$1,500.00) and contain a sworn statement as to the basis upon which the vested rights or

denial of all economic use are asserted, together with documentary evidence supporting the claim and any further documentation required by the county. The hearing examiner shall hold a public hearing on the application and the property owner must provide competent substantial evidence in order for the hearing examiner to make a determination as to whether the property owner has established vested rights or has been denied all economic use of the parcel.

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

- (1) No property owner claiming that this article as applied constitutes or would constitute a taking of private property or an abrogation of vested rights may pursue such a claim in court unless he or she has first exhausted the applicable administrative remedies provided in subsection (a) above or any other statutory provisions as set forth under Florida law.
- (2) Judicial review of final permit decisions under this article shall be by the filing of a Petition for Certiorari in the Circuit Court of the Twentieth Judicial Circuit in and for Charlotte County in accordance with the Florida Rules of Appellate Procedure for the review of quasi-judicial decisions of a local government entity.

(Ord. No. 2007-054, § 1, 7-17-07)

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

- (a) The excavation administrator shall have the right to inspect the lands affected under this article. This right shall extend to lands already permitted to ensure compliance with this article and all conditions of the permit, as well as those lands where the applicant has submitted a complete application to the growth management department for the issuance of a permit under this article.
- (b) Inspections shall be performed at least annually. At least twenty-four (24) hours' advance notice where practicable of inspections shall be required and upon arrival the inspector shall attempt to contact operating personnel.
- (c) A copy of all required local, state and federal permits and reports must be available for inspection on site at all times.
- (d) A copy of the site plan must be available for inspection on site at all times.

(Ord. No. 2007-054, § 1, 7-17-07; Ord. No. 2009-040, § 6, 9-15-09)

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

- (a) *Groundwater.* The quality and level of the surficial aquifer shall be monitored in monitoring wells required by the applicable Florida Water Management District beginning sixty (60) days before excavation begins. The parameters of the monitoring shall be adopted by resolution of the BCC.
- (b) *Reports.* After initiation of its monitoring program, the permittee shall report monthly to the excavation administrator summarizing the results of the monitoring. Additionally, copies of all reports required by state or federal agencies shall also be simultaneously submitted to the excavation administrator.

(Ord. No. 2007-054, § 1, 7-17-07)

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