

**Application No.**  
**PA-14-09-14**  
**(Plan Amendment)**

**Applicant**  
**Board of County Commissioners /**  
**Revisions to MRE (Mineral Resource**  
**Extraction) FLUM**

**Legislative**

**Countywide**



# Charlotte County Government

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## MEMORANDUM

Date: October 27, 2014

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

From: Elizabeth Nocheck, Planner II

Subject: PA-14-09-14-LS  
Amendment to FLU Appendix I: Land Use Guide  
Mineral Resource Extraction (MRE) Special Provisions

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At the direction of the Board of County Commissioners (BCC), staff was directed to revise the County's Excavation and Earthmoving regulations. On September 23, 2014, the BCC approved Article XXIII Earthmoving, Chapter 3-5, of the Charlotte County Code of Laws and Ordinances, which replaced the existing Article XXI Excavations and Article XXIII Excavation and Earthmoving.

While these revisions were being developed, the BCC also directed staff to revise the County's Comprehensive Plan (Plan) with the intention of removing duplicative and regulatory language from the Plan and locating it in the County's Land Development Regulations (LDRs), as appropriate.

In accordance with the BCC's instructions, staff is proposing to amend part of the policy found under the "Special Provisions" of the MRE Land Use Category section in FLU Appendix I: Land Use Guide, which reads as follows:

2. Properties that have been approved for ~~mining operations~~ commercial excavations by the County prior to the adoption of this designation (12/15/2008) shall have a continuing right to conduct excavation operations in accordance with the approved permit, the Comprehensive Plan, and the Excavation and Earthmoving section of the Charlotte County Code of Laws and Ordinances. ~~However, any person with an~~

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~~expiring or inactive permit shall not seek an extension or renewal unless a land use change to this designation is approved.~~

Staff is proposing to remove the last sentence of this policy, shown stricken in red, because this language prevents commercial excavations with permits approved prior to December 15, 2008, from renewing expiring or inactive permits unless they apply for and are granted a FLUM amendment to MRE and rezone the property to Excavation and Mining (EM). Many of the affected commercial excavations will not be able to apply for the required FLUM amendment due to language found in the subsection "Requirements of the Plan Amendment." This language prohibits applications for plan amendments to the MRE designation in the majority of the County, and is shown as follows:

1. *Limitations on Location:* The County will permit plan amendments to Mineral Resource Extraction to be submitted for project sites located in areas that are not labeled ~~Group III Excavation~~ Commercial Excavation Prohibited Areas on FLUM Series Map #24. These permitted locations shall include properties located in the Rural Service Area east of U.S. 17 and U.S. 41 that are not within the ½ mile setback or Tippen Bay and Long Island Marsh areas of the Watershed Overlay District (FLUM Series Map #4), the Prime Aquifer Recharge Area of northeast Charlotte County (FLUM Series Map #6), or within 2,640 feet (one-half mile) of the recharge area.

These restrictions may place an undue burden on commercial excavations which are still in compliance with the conditions and standards of their permit but are unable to renew their permits only because they are unable to amend their FLUM designation.

If this amendment is approved, commercial excavations with permits approved prior to 12/15/08 would be allowed to renew their expiring or inactive permits without being required to first amend their FLUM designation and rezone their property, but only in compliance with Section 3-5-462 *Nonconformities* of Article XXIII Earthmoving, which reads as follows:

#### 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.

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

This section of the Code supports the removal of the proposed language from the Plan by clearly stating that if any changes are made to the approved permit, or if the commercial excavation is no longer in compliance with the standards, requirements, and conditions of the approved permit, the commercial excavation must cease activity until it can be brought into compliance with the Plan and LDRs. This would allow compliant commercial excavations in existence before 12/15/08 to renew their permits and continue activity at the approved levels.

Section 3-5-476 *Earthmoving Permit Modifications to Approved Permits* provides language stating that the Earthmoving Administrator has the authority to deny an application for a permit extension if the conditions within the vicinity of the commercial excavation have changed since the initial permit approval and the continuation of earthmoving activity would be detrimental to the area. By giving the Earthmoving Administrator the authority to deny a permit renewal if the continued operation of earthmoving activity would be harmful to the surrounding area, a level of protection is added. This section of the LDRs supports the proposed removal of language from the Plan by allowing an earthmoving operation to at least apply for a renewal, and then giving County staff the opportunity to review and determine if continuing earthmoving activity at the present levels will be appropriate.

Financial impacts must be considered as part of this proposed amendment. As the Plan currently reads, many commercial excavations will be forced to cease activity upon the expiration of their permits because they are unable to apply for a FLUM amendment. When these commercial excavations are shut down, there will be economic consequences extending beyond the commercial excavation operators and their employees. As supply of rock and dirt diminishes, costs will likely go up for contractors, and subsequently, businesses and homeowners will end up paying for the increased costs of materials. Developers may have to obtain the necessary material from other counties, which in turn benefits these counties through increased revenue and development. In addition to the loss of revenue generated by these materials, the County may see additional damage to its roads from increased truck traffic from longer haul distances. Commercial excavation operations are required to pay the Roadway Service Life Reduction (RSLR) Fee. The money generated by this fee helps finance the repairs necessary to roads which are heavily utilized by trucks hauling materials to and from development sites and commercial excavation operations. When the commercial excavations unable to renew their permits go out of business, the revenue collected by this fee will be reduced, but the level of damage to the roads is unlikely to change. If this amendment is approved, a level of predictability will be added to the permitting and renewal processes for mining operations. Operators of commercial excavations will be able to continue investing in their businesses knowing that they will be able to build out to the extent approved in their permits.

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The existing policy was written into the Plan during a time when a strong anti-mining attitude was present throughout the County. This led to an overregulation of the industry through reactionary and restrictive Plan policies and LDRs. The recent revisions to the LDRs, which were developed through collaborations between stakeholders and members of the public, show a change in attitude and a shift towards a more balanced view of the mining industry, one that recognizes the necessity of commercial excavations in the County, while still providing protections to the environment. By placing the regulatory language in the LDRs, the Plan serves its intended purpose as a guide for the vision of Charlotte County's future.

To ensure consistency between the LDRs and the Plan, staff is proposing to change the term "Group III Excavations" to "Commercial Excavations" throughout the MRE land use category section of the Plan. Excavation and earthmoving operations were formerly categorized into three groups, but have been reclassified as part of the revisions to the Earthmoving Code in the LDRs, making this change necessary in the Plan. The classifications of all earthmoving operations are defined in the LDRs, with "Commercial Excavations" matching the standards of former "Group III Excavations". Another change made in the revised Earthmoving Code is that the Earthmoving Administrator has been given the authority to approve excavation permits, therefore requiring the change in terminology from "Hearing Examiner" to "Earthmoving Administrator" in item #3 of the "Special Provisions" subsection.

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**MINERAL RESOURCE EXTRACTION (MRE)**

This category shall be used for lands wherein the intent is to extract for commercial purposes rock, sand, gravel or similar non-renewable substances occurring in their natural state on or below the surface of the earth. Permitted extraction activities under this category shall include the removal of mineral resources from the ground and the processing of those resources. Under this category, a property owner or lessee may apply for an excavation for commercial purposes (Commercial Excavation), which is defined in Article XXIII Earthmoving of the Charlotte County Code of Laws and Ordinances. ~~Group III excavation; commercial excavations are identified in the Excavation and Earthmoving section of the Charlotte County Code of Laws and Ordinances as Group III excavations.~~ They may also engage in agricultural use of the property as defined by the Agriculture FLUM designation. The minimum acreage under this category is 50 acres.

**General Range of Uses**

Commercial excavations, agricultural uses, and public services and facilities

**Maximum Density/Intensity**

*Density:* The maximum density is equivalent to that of the prior FLUM designation - one dwelling unit per ten acres or one dwelling unit per 40 acres, as applicable.

*Intensity:* The maximum lot coverage by all buildings is ten percent. The maximum height of structures is 60 feet.

**Requirements of the Plan Amendment**

1. *Limitations on Location:* The County will permit plan amendments to Mineral Resource Extraction to be submitted for project sites located in areas that are not labeled Commercial Excavation ~~Group III Excavation~~ Prohibited Areas on FLUM Series Map #24. These permitted locations shall include properties located in the Rural Service Area east of U.S. 17 and U.S. 41 that are not within the ½ mile setback or Tippen Bay and Long Island Marsh areas of the Watershed Overlay District (FLUM Series Map #4), the Prime Aquifer Recharge Area of northeast Charlotte County (FLUM Series Map #6), or within 2,640 feet (one-half mile) of the recharge area.
2. *Submittal Requirements:* Any person applying for this designation must submit:
  - a. A concept plan showing the approximate boundaries of any area(s) that would be excavated, along with the probable size, shape, and depth of the excavation area(s), recharge trenches and settling ponds.
  - b. A map of all man-made features on the site and within 500 feet of the site.
  - c. A survey of wetlands on the site and a map showing approximate locations of wetlands and other water features within one-half mile of the site, as applicable, and a discussion of how the proposed excavation will not be a detriment to those resources.

- d. A discussion of quality of life issues, in particular, the effect of a proposed excavation upon the health, safety and welfare of residents within one-half mile of the site.

### Special Provisions

1. The zoning district consistent with this FLUM designation is Excavation and Mining, Charlotte County Code of Laws and Ordinances, as may be amended.
2. Properties that have been approved for mining operations by the ~~Ce~~county prior to the adoption of this designation (12/15/2008) shall have a continuing right to conduct excavation operations in accordance with the approved permit, the Comprehensive Plan and the Excavation and Earthmoving section of the Charlotte County Code of Laws and Ordinances. ~~However, any person with an expiring or inactive permit shall not seek an extension or renewal unless a land use change to this designation is approved.~~
3. New excavation permit applications, or requests for an amendment to an approved ~~Commercial Excavation Group III excavation~~ permit proposed subsequent to September 9, 2008, shall be permitted only after:
  - a. Adoption of a plan amendment to Mineral Resource Extraction;
  - b. Zoning review and approval; and
  - c. Approval from the ~~Earthmoving Administrator Hearing Examiner~~ in charge of excavation permits.
4. ~~Commercial Excavations Group III excavations~~ within Wildlife Corridor Critical Linkages shall provide wildlife corridor connections through the property, similar to a Conservation Subdivision or Rural Community. These corridors shall be placed under conservation easement.