

1 PART III - LAND DEVELOPMENT AND GROWTH MANAGEMENT

2 Chapter 3-5 - PLANNING AND DEVELOPMENT

3 **Article XXIII. Earthmoving**

4

5 *Staff Note: The sections highlighted in Yellow are those areas where there was no consensus opinion*  
6 *during the roundtable on January 8, 2014.*

7

8 **Section 3.5.457 Intent and Purpose.**

9 It is the intent and purpose of this Article to regulate existing and future earthmoving operations in  
10 such a manner as to minimize any direct, indirect and cumulative impacts detrimental to wildlife and  
11 its habitat, public and private infrastructure, ground water and surface water, the public health, safety,  
12 and welfare, current and surrounding land uses, and property values as a result of such activities within  
13 the County.

14

15 **Section 3.5.458 Applicability.**

16 A. The provisions of this Article apply to any person in the unincorporated county presently  
17 conducting or proposing to dig, mine, scrape, excavate, or in any manner conduct an activity  
18 that moves or removes earth from its existing location and moves it to another location,  
19 whether on the same or another lot. Compliance with the requirements of this Article shall not  
20 relieve any party from complying with the requirements of any other applicable Federal, State,  
21 or local law.

22 ~~A. Where requirements of this Article differ from provisions of the Babcock Development of~~  
23 ~~Regional Impact (DRI) Development Order, and subsequent Incremental Development Orders,~~  
24 ~~the provisions of the DRI will supersede the requirements of this Article.~~

25 B. Babcock Ranch Community Master Development of Regional Impact Master DRI Development  
26 Order is approved for a 13,630 acre community (“the DRI Boundary”). The developer has  
27 obtained state and federal permits for a series of lakes to be constructed during the  
28 development of the community within the DRI Boundary. Charlotte County shall issue permits  
29 and or permit extensions for those lakes permitted by the state or federal agencies in  
30 accordance with the state and federal permits, provided that the fill from those lakes currently  
31 permitted under EarthSource Mine Permit #07-EX-16 or an extension or modification thereof  
32 may be removed from the DRI Boundary, but those lakes not yet under a County earthmoving  
33 permit shall retain the fill material within the DRI Boundary.

34

35 **Section 3.5.459 Earthmoving Operations.**

36 All earthmoving operations are prohibited unless one of the following conditions is met.

37 A. The earthmoving operation is exempt per this Article.

38 B. A Construction Permit has been approved.

Comment [IW1]: Change made in response to public comment.

1 C. A Standard Earthmoving Permit has been approved.

2 D. A Specific Earthmoving Permit has been approved.

3  
4 **Section 3.5.560 Application Requirement.**

5 A permit shall only be applied for by the owner of the lot on which the activity will occur or an entity  
6 granted permission by the owner of the lot.

7  
8 **Section 3.5.461 Staff Review and Action.**

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

11  
12 **Section 3.5.462 Nonconformities.**

13 An earthmoving operation that has been approved by the County, which has a valid permit on the  
14 effective date of this Article and which is made nonconforming by this Article, may continue to operate  
15 in accordance with the regulations under which it was approved. Any request for modification, except  
16 for a request to transfer the permit to a new permit holder~~the two modifications listed below~~, shall  
17 require the operation to come into compliance with this Article, the Comprehensive Plan, and the Land  
18 Development Regulations.

19 ~~A. A request to transfer the permit to a new permit holder.~~

20 ~~B. A request to renew the permit beyond the original expiration date, or the expiration date as~~  
21 ~~modified by legislatively allowed extensions.~~

22 ~~1. A request to renew a permit for a nonconforming operation may only be approved if~~  
23 ~~all of the following conditions are met at the time of renewal:~~

24 ~~a. The operation is in compliance with the standards, requirements, and~~  
25 ~~conditions under which the permit was issued.~~

26 ~~b. There are no changes to the operation.~~

27 ~~c. All local, State, and Federal permits are valid.~~

28 ~~2. The operation shall comply with any new fees that have been adopted prior to the~~  
29 ~~renewal date.~~

30  
31 **Section 3.5.463 Exempt Earthmoving Operations.**

32 A. Notification to the County ~~for earthmoving activities association with the following~~  
33 ~~operations shall not be required. This does not remove the requirement to apply for other~~  
34 ~~necessary County permits, such as a right-of-way permit. for the following earthmoving~~  
35 ~~operations:~~

36 1. Grave digging.

37 2. Well construction.

Comment [IW2]: Staff initiated change

3. Maintenance dredging of canals and stormwater ponds. Publicly-funded maintenance dredging shall not occur within 15 feet of a seawall and 10 feet of a piling support structure.
4. Plowing, tilling and other similar soil alteration when in association with the cultivation of crops for human or animal consumption, for renewable energy manufacture, or for silviculture operations.
5. Flower gardening and landscaping when conducted on a lot containing a habitable dwelling unit ~~as long as there are no adverse impacts on adjacent properties.– The following are limits to the amount of earth that may be placed on the lot within a five year period for gardening and landscaping purposes:~~
  - ~~a. For a lot of one half acre or less, thirty two cubic yards.–~~
  - ~~b. For a lot of greater than one half acre and less than two and one half acres, sixty two cubic yards.–~~
  - ~~c. For a lot of two and one half acres or greater, ninety two cubic yards.–~~
6. Garden supply retailing or wholesaling. The stockpiling of loose soil, gravel, mulch, and other similar gardening materials that are accessory to the business.
7. Construction of nonresidential farm buildings.
8. Construction of public roads and associated stormwater infrastructure.
9. Mini Farm Pond construction. ~~An~~ This is an excavation with a footprint that is less than or equal to three acres and which will be ~~for~~ used as a livestock watering pond, irrigation pond, or other bona fide agriculture use. The total amount of cumulative acres of excavations that may occur on contiguous lots is 10 percent of the total acreage of the lot or contiguous lots. The cumulative acres are inclusive of all excavations on-site but exclusive of ditches. ~~The size of the excavation footprint is inclusive of all other excavations on-site but exclusive of ditches.~~

Comment [IW3]: Changes in this subsection made in response to public comment

**B. Exemption Verification Process.** Notification to the County for earthmoving activities association with the following operation shall be required in order to confirm the exempt status of the operation. ~~Application to the County in order to confirm the exempt status of this earthmoving operation shall be required:~~

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

Comment [IW4]: Changes in this subsection made in response to public comment.

1 a. Location

- 2 1) If the lot is located in the Rural Service Area, it shall have a consistent  
3 zoning and Future Land Use Map designation that allows agriculture:  
4 a) Zoned Agriculture General or Agriculture Estate with an  
5 Agriculture Future Land Use Map (FLUM) designation.  
6 b) Zoned Excavation and Mining with a Mineral Resource  
7 Extraction FLUM designation.  
8 c) Zoned Planned Development with a Rural Community Mixed  
9 Use FLUM designation.  
10 d) Zoned Residential Estates-1 or -5 with a Rural Estate  
11 Residential FLUM designation.  
12 2) If the lot is located in the Urban Service Area, it shall have a  
13 consistent zoning and FLUM designation that allows agriculture or a  
14 vested bona fide agriculture use.

15 b. All aspects of this earthmoving operation shall only occur on uplands.

16 c. No excavated material shall be placed in a floodplain.

17 ~~b~~d. All excavated material shall be retained on-site; the manner in which the  
18 material will be permanently disposed shall be described and, if appropriate,  
19 illustrated.

20 ~~e~~e. The depth of the excavation shall not exceed two feet above confining layer;  
21 all operations proposing a depth below 12 feet shall comply with the soil  
22 boring requirements of this Article.

23 ~~f~~f. The minimum setback from top of bank to any lot line, easement, and  
24 structure shall be 10 feet.

25  
26 **Section 3.5.464 Operation Standards.**

27 **A. General Earthmoving Operation Standards.**

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

29 1. Hours of Operation

- 30 a. In the Rural Service Area and in the Urban Service Area of the Babcock DRI,  
31 an earthmoving operation located within two miles of a dwelling unit in  
32 existence at the time of permitting, shall only conduct operations between  
33 the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and between  
34 the hours of 7:00 a.m. and 12:00 p.m. on Saturday, unless otherwise  
35 approved by ~~a Hearing Examiner through the Earthmoving Permit Variance~~  
36 ~~procedure~~the Administrator. If there is no dwelling unit within two miles, the  
37 hours of operation are not restricted.

- 1                   b. In the Urban Service Area, but not including the Urban Service Area of the  
2                   Babcock DRI, an earthmoving operation shall only conduct operations  
3                   between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and  
4                   between the hours of 7:00 a.m. and 12:00 p.m. on Saturday.
- 5                   2. An earthmoving operation shall not have an adverse impact on the quality or  
6                   quantity of groundwater or surface water of surrounding or downstream properties.
- 7                   3. An earthmoving operation shall not impede or destroy historic flowways. All historic  
8                   flowways on the earthmoving operation site shall be protected and, if necessary due  
9                   to degradation, restored.
- 10                  4. An earthmoving operation shall not have an adverse impact on the 100-year  
11                  floodplain.
- 12                  5. An earthmoving operation shall not impact off-site drainage.
- 13                  6. An earthmoving operation shall not have an adverse impact on environmentally  
14                  sensitive habitat or any listed species either on-site or off-site.
- 15                  7. An earthmoving operation shall protect wetlands and other surface waterbodies.
- 16                  a. There shall be a minimum setback of 50 feet, **or as approved by the state**  
17                  **permit**, vegetated with native species, from any activity associated with an  
18                  earthmoving operation to:
- 19                      1) Any on-site wetland, unless mitigation for its destruction is approved,  
20                      and any on-site waterbody that is not integral to the **earthmoving**  
21                      **operationexcavation activity**.
- 22                      2) Any off-site wetlands or waterbodies.
- 23                  b. No activity other than the removal of exotic invasive species shall take place  
24                  within this setback. Depending on the duration and intensity of the activity,  
25                  plantings of native vegetation may be required within the buffer.
- 26                  c. Sediment barriers, fencing, and signage, as necessary depending on the  
27                  activity, shall be placed along the outside edge of the 50 foot setback as  
28                  protection.
- 29                  8. An earthmoving operation shall **minimize wind erosion of exposed soils.be operated**  
30                  **in such a manner that airborne debris emissions are minimized.**
- 31                      a. **Best Management Practices to reduce wind erosion shall be used.**
- 32                      b. **All areas of one acre or greater that will result in exposure of denuded soil**  
33                      **during the months of November through March shall employ dust and other**  
34                      **airborne debris control procedures.**
- 35                      c. **All areas of one acre or greater, except roads and other surfaces designed for**  
36                      **vehicular circulation, which will be subject to erosion for a period longer than**  
37                      **twelve months prior to the establishment of finished grade, agricultural**

**Comment [IW5]:** Further review of the existing LDRs prompted revisions to this subsection. Language from erosion control section of Code of Laws and Ordinance included into this code.

1 crops, or permanent perennial vegetative cover shall be stabilized 30 days  
2 after creation.

3 d. Unpaved roads and other surfaces designed for vehicular circulation shall be  
4 treated during dry periods to reduce dust and other airborne debris  
5 emissions.

6 e. Stockpiles shall not be higher than 50 feet and shall be treated as necessary  
7 to reduce dust and other airborne debris emissions.

8 9. An earthmoving operation shall control water erosion and the effects of water  
9 erosion.

10 a. Best Management Practices to reduce water erosion and the effects of water  
11 erosion shall be used.

12 b. All slopes shall be stabilized. Stabilization may be done with a perennial  
13 grass cover and with native plants appropriate to the conditions of the site.  
14 Grass and native plant cover shall be required to extend down to the  
15 seasonal high groundwater line only.

16 1) Stabilization of excavation or fill operations is required to be  
17 completed when the final shaping of the slopes is done.

18 2) Stabilization of stockpiles is required if the stockpile will be in place  
19 for longer than six months.

20 3) Stabilization of other slopes is required upon completion of the  
21 project.

22 b. All development sites shall be bordered by sediment barriers in order to filter  
23 any water leaving the site.

24 c. The toe of all exposed slopes not interior to an excavation operation shall be  
25 bordered by sediment barriers.

26 d. Barriers shall be placed and maintained such that drainage will not overflow  
27 or bypass the barrier. The effectiveness of the filtration shall be maintained  
28 by regular clearing of captured sediments or by refurbishment, as necessary.  
29 Captured sediments are to be disposed of on upland portions of the  
30 development site.

31 e. Barriers shall remain in place until the slope is leveled or the site is  
32 permanently stabilized.

33 10. An earthmoving operation shall protect native topsoils to the greatest extent  
34 practicable. Any site which is identified by the Natural Resource Conservation  
35 Service as devoid of native topsoils shall be exempt from this requirement. ~~Specific~~  
36 ~~Major Earthmoving operations—Ag~~ Excavations and Commercial Excavations are  
37 exempt from this requirement.

38 a. The topsoil that occurs on a lot prior to development shall be retained or

Comment [IW6]: Further review of the existing LDRs prompted revisions to this subsection.

1 stockpiled throughout the development of the lot such that it will not be lost  
2 during the removal of earth or placement of fill.

- 3 b. Following fill placement and prior to landscaping, stockpiled topsoils shall be  
4 redistributed over the exposed portions of the site.

5 ~~10. An earthmoving operation shall stabilize stockpiles such that there is no migration of  
6 materials or particulate matter beyond the site. Stockpiles shall not be higher than  
7 50 feet.~~

Comment [IW7]: This was combined into 8 above.

- 8 11. An earthmoving operation shall protect drainage easements.  
9 a. Existing front and side swales shall not be filled or obstructed in any way, and  
10 the adjacent lot's drainage shall be maintained. Easements may be altered  
11 with agreement of the easement holder.  
12 b. Vehicles and equipment shall not be moved onto any site unless it is over an  
13 acceptably constructed and approved crossover.  
14 c. Earthmoving operations requiring access across county rights-of-way shall  
15 install a temporary pipe in the right-of-way as required by the County  
16 Engineer. Temporary pipe must remain in place until permanent pipe is  
17 placed, if required, or the operation is completed.  
18 12. An earthmoving operation will require permits in accordance with Charlotte County  
19 law and applicable Federal and State law for any burning or incineration.  
20 13. An earthmoving operation site shall be safely secured against trespass. Depending  
21 on the duration of the activity, the intensity of the activity and adjacent uses, a fence  
22 or other similar means of securing the site may be required.  
23 14. Depending on the duration of the activity, the intensity of the activity and adjacent  
24 uses, an earthmoving operation site may be required to be aesthetically enhanced  
25 with landscaped screening buffers or landscaped earthen berms.  
26 15. Noise generated at an earthmoving operation site shall not exceed 65 decibels when  
27 measured at the nearest dwelling unit or institutional use to the operation site.  
28 Generators and pumps used during an earthmoving operation shall be well muffled.

29 ~~**B. Critical Area Stabilization.**~~

30 ~~The following additional standards apply to highly erodible or critically eroding areas  
31 including, but not limited to, dams, dikes, levees, cuts, ditches and other artificial  
32 watercourses, fill and spoil piles, and denuded gullied sites. These shall be stabilized to  
33 conserve topsoil and prevent sedimentation of surface waters.~~

Comment [IW8]: This was combined with 8 And 9 above.

- 34 ~~1. All graded areas of one acre or greater that will be subject to erosion by wind  
35 or water for a period longer than twelve months prior to the establishment  
36 of finished grade, agricultural crops, or permanent perennial vegetative  
37 cover shall be stabilized. Unpaved roads and other surfaces designed for  
38 vehicular circulation are exempt from this requirement.~~

1 ~~2. All slopes of four horizontal to one vertical or steeper shall be sodded or~~  
2 ~~otherwise stabilized in accordance with guidelines of the Natural Resource~~  
3 ~~Conservation Service. In the event that the slope is a temporary result of~~  
4 ~~earthmoving activities associated with development of a site and said slope~~  
5 ~~will be modified during the length of the permit, stabilization shall not be~~  
6 ~~required.~~

7 ~~3. All swales and other manmade, nonstructural drainage conveyances shall be~~  
8 ~~stabilized with perennial grass cover; application may be through sodding,~~  
9 ~~hydroseeding, or other methods which achieve stabilization and are~~  
10 ~~approved by the County. In the event that the bottom of the conveyance is~~  
11 ~~below seasonal high groundwater levels, grass cover shall be required to~~  
12 ~~extend down to the seasonal high groundwater line only.~~

13 **C. Excavation Specific Operation Standards.**

14 The following additional standards apply to excavation operations.

- 15 1. The maximum depth of any excavation is two feet above the confining layer.
- 16 2. The finished slope of any excavation bank shall ~~meet or exceed four horizontal to~~  
17 ~~one vertical~~~~not be steeper than 4 to 1~~. For agricultural excavations this slope is  
18 measured from top of bank to a depth no less than two feet below the mean water  
19 table and for all other excavations this slope is measured from top of bank to a  
20 depth no less than five feet below the mean water table.
- 21 3. In order for stormwater to be discharged into an excavation, a Stormwater Plan  
22 must be approved by the County or applicable water management district.
- 23 4. No solid or liquid waste shall be placed in an excavation except for clean debris in  
24 accordance with Subsection 3.5.466 A6.
- 25 5. Dewatering operations shall ~~provide minimum~~ ~~not cause adverse impacts to~~  
26 ~~drawdown of the groundwater table outside the excavation site. and Any~~  
27 ~~excavation dewatering operations that results in detrimental fluctuations of water~~  
28 ~~levels in adjacent water bodies, wetland areas or water supply wells shall be~~  
29 ~~terminated until such time as a satisfactory plan is developed and implemented to~~  
30 ~~maintain water levels in such areas.~~
- 31 6. Blasting, drilling or hammering to fracture a rock surface, and similar activities, shall  
32 be limited to the hours between 9 a.m. and 4 p.m. Monday to Friday and 9 a.m. and  
33 12 p.m. Saturday if conducted within one mile of any habitable dwelling unit or  
34 institutional use, unless otherwise approved. Trees and other buffering  
35 techniques may be required to mitigate noise impacts.
- 36 7. The permit holder shall provide traffic safety improvements such as signing, striping,  
37 barrier rails, turn and/or acceleration lanes with tapers, all meeting American  
38 Association of State Highway and Transportation Officials' Standards and which shall

Comment [IW9]: Revised in response to public comments.



1 comply with the Manual of Uniform Traffic Control Devices, as required by the  
2 County Engineer.

3 8. Haul routes:

- 4 a. To the greatest extent possible, internal haul routes shall not be located  
5 within 250 feet of the lot boundary of the site, except at the lot exit and  
6 entry point.
- 7 b. An apron is required at the terminus of the internal haul route where it  
8 intersects the external haul route. Aprons shall be built to the specifications  
9 of the County Engineer.
- 10 c. The use of haul routes shall not have undue impact on persons and  
11 properties along or in proximity to a haul route. **An undue impact would be**  
12 **an increase in airborne debris beyond what is normally experienced without**  
13 **the earthmoving truck traffic, increased noise during the evening and night**  
14 **hours from truck traffic, or trucks that exceed speed limits or are otherwise**  
15 **determined to be operating in contradiction of the law.**
- 16 d. It shall be the responsibility of the permit holder to mitigate impacts arising  
17 from the use of haul routes. Required mitigation measures may include any  
18 or all of the following:
- 19 1) Watering and other dust control measures.
  - 20 2) Cleanup of material overspills.
  - 21 3) Maintenance grading of unpaved roads, shoulder grading and  
22 restoration.
  - 23 4) Pavement maintenance, including resurfacing, reconstruction, and  
24 patching.
  - 25 5) Safety improvements such as striping barrier rails, turn and  
26 acceleration lanes.
- 27 e. If a privately maintained right-of-way is used to gain access to an operation  
28 site, the applicant shall supply an affidavit indicating that they have legal use  
29 of that right-of-way for a haul route.

**Comment [IW10]:** Revised in response to public comments.

30 ~~**D. Filling, Grading, Stockpiling Specific Operation Standards.**~~

31 ~~The following additional standards apply to filling, grading, or stockpiling operations.~~

- 32 ~~1. All drainage leaving development sites shall be filtered by sediment barriers. It shall~~  
33 ~~be the responsibility of the developer to maintain the effectiveness of filtration by~~  
34 ~~regular clearing of captured sediments or by refurbishment, as necessary. Captured~~  
35 ~~sediments are to be disposed of on upland portions of the development site.~~
- 36 ~~2. Best Management Practices shall be used to barricade the toe of all exposed slopes~~  
37 ~~which meet or exceed four horizontal to one vertical. These shall be placed and~~

**Comment [IW11]:** This was combined into B 8 and 9 above.

1 ~~maintained such that drainage will not overflow or bypass the barrier and shall~~  
2 ~~remain in place until the slope is leveled or permanently stabilized.~~  
3 ~~3. All graded areas of one acre or greater which will result in exposure of denuded soil~~  
4 ~~during the months of November through March shall employ dust control~~  
5 ~~procedures consistent with the guidelines of the Natural Resource Conservation~~  
6 ~~Service or the FDEP Florida Development Manual.~~

7  
8 **Section 3.5.465 Standard Earthmoving and Construction Permits.**

9 The following activities shall require County review and approval prior to the commencement of any  
10 earthmoving activity; review and approval by the Earthmoving Administrator is not required. No  
11 earthmoving activity shall occur on-site prior to the approval of the permit. ~~A maximum of 10 percent~~  
12 ~~or 15,000 cubic yards, whichever is greater, of the total amount of cubic yards to be excavated may be~~  
13 ~~removed from a development site approved under a Standard Earthmoving or Construction Permit If~~  
14 ~~excavated material is to be removed from the site, the roadway service life reduction fee will be~~  
15 ~~assessed.~~ [For a Development of Regional Impact ~~(DRI)~~, the development site shall mean any of the  
16 area within the DRI boundary.] Stockpiling is considered an accessory to these earthmoving activities  
17 but shall only be allowed for material used on the development site and cease when there is no longer  
18 a valid permit for the site.

19 **A. Standard Earthmoving Permits.**

20 The following activities require a Standard Earthmoving Permit.

- 21 1. ~~Site preparation~~ Earthmoving activities for subdivisions, multi-family, commercial,  
22 and industrial site development which includes approval of earthmoving activities  
23 that occur prior to approval of a construction permit or final plat, such as site  
24 grading, stormwater and other utility installation, and road construction. This  
25 review process will occur simultaneous with the Site Plan Review process and the  
26 approved Standard Earthmoving Permit will be given to the applicant when the  
27 project receives Final Site Plan approval. Earthmoving in association with  
28 construction of a building on the development site may be otherwise reviewed and  
29 approved through the Construction Permit process.
- 30 2. Earthmoving activities associated with the creation of residential ponds. This  
31 activity shall meet the following requirements:
- 32 a. The lot shall contain a habitable dwelling unit on land zoned for residential  
33 use.
  - 34 b. The following design requirements are adhered to:
    - 35 1) The maximum excavation footprint shall be equal to or less than ten  
36 percent of the lot or one acre, whichever is less, inclusive of all  
37 excavations on-site.
    - 38 2) The depth shall not exceed 12 feet.

- 3) There shall be a minimum setback of 25 feet from top of bank to any lot line, easement, and structure.
3. Earthmoving activities associated with the creation of tracks and trails used by off-road vehicles, motorbikes, bicycles and other similar apparatuses.
4. Earthmoving activities associated with the repair, replacement or expansion of septic tanks and drain fields.
5. Raising the elevation of a portion of a lot. This shall ~~only be approved if the lot contains~~ a habitable dwelling unit, ~~and, the maximum height that can be reached through this type of filling~~ is one foot above natural grade.
6. Earthmoving activities associated with development of active and passive parks, such as playgrounds, ball courts and fields, trails, and associated parking.
7. Stockpiling of dredge spoils. Dredge spoil may be stored on vacant or developed residential, commercial, or industrial lots only if the following requirements are met:
  - a. The storage occurs no longer than one year.
  - b. The spoil pile is at least 20 feet from any buildings.
  - c. The spoil pile is stabilized and ~~dust control~~ measures are used to reduce the migration of ~~dust and other particulate matter~~ airborne debris.
  - d. There shall be no removal of or harm to native plant or animal species, except grasses, to accommodate the storage. A listed species survey, for flora and fauna, and identification of the FLUCCS category of the proposed spoil site are required to satisfy this requirement.
  - e. The areas used for stockpiling shall be reclaimed by plantings with native groundcover, shrubs, and trees, or proof provided in the form of an approved Construction Permit that the site will be developed with a legal use after the stockpile has been removed. If the site is not to be developed with a use, the site shall be planted so that at least 20 percent of the area used for the stockpiling activity is covered with native trees and shrubs; the remainder shall be seeded with native grasses or other native plants.

**B. Construction Permits.**

~~This subsection is applicable to activities that are not listed in subsection A above. The following individual activities will not require a separate application for an earthmoving permitting, but will be permitted in accordance with otherwise applicable County regulations: for the installation of irrigation pipe, commercial landscaping, slabs, driveways, seawall construction, construction or destruction of pools and buildings including standard building permits, tree removal and such other similar development activities shall be conducted as usual through the applicable County department and the applicants for these permits are exempt from obtaining a separate permit for earthmoving associated with these activities. However, the earthmoving standards shall continue to apply to these~~

**Comment [IW12]:** Revised in response to public comments

1 ~~activities.~~ Activities that are first reviewed through Site Plan Review should have obtained a  
2 Standard Earthmoving Permit for much of the ~~site preparation~~ earthmoving associated with  
3 that activity, such as the installation of utilities, roads, and stormwater infrastructure.  
4

5 **Section 3.5.466 Specific Earthmoving Permits.**

6 The following categories consist of activities that require review and approval by the Earthmoving  
7 Administrator. ~~These activities require a Specific Minor or Specific Major Earthmoving Permit.~~ No  
8 earthmoving activity shall occur on-site prior to the approval of a permit.

9 **A. ~~Specific Minor Earthmoving Operations.~~**

10 **1. ~~Minor Excavation for Agricultural Purposes (Ag Minor Excavation).~~**

11 This is for an excavation greater than 10 acres and less than or equal to 20 acres to be  
12 used as a livestock watering pond, aquaculture pond, irrigation pond, or similar bona  
13 fide agriculture use. ~~The size of the excavation footprint is inclusive of all other~~  
14 ~~excavations on site but exclusive of ditches. The following requirements apply:~~

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

- 17 1) ~~Zoned Agriculture General or Agriculture Estate with an Agriculture FLUM~~  
18 ~~designation.~~
- 19 2) ~~Zoned Excavation and Mining with a Mineral Resource Extraction FLUM designation.~~
- 20 3) ~~Zoned Planned Development with a Rural Community Mixed Use FLUM designation.~~
- 21 4) ~~Zoned Residential Estates 1 or 5 with a Rural Estate Residential FLUM designation.~~

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

24 c. ~~All excavated material shall be retained on site.~~

25 d. ~~There shall be a minimum setback of 50 feet from top of bank to any lot line,~~  
26 ~~easement and structure.~~

27 **A.2. ~~Minor Excavation for~~ Reconfiguration of a Lake (Lake ~~Minor~~**  
28 **~~Excavation~~Reconfiguration).**

29 This is for changing the configuration of an existing lake, increasing the size, or increasing  
30 the depth more than would occur with a maintenance dredge. ~~The Administrator may~~  
31 ~~require this item to undergo review as a Specific Major Earthmoving operation if the~~  
32 ~~Administrator determines that the impacts of the operation could impact the health, safety~~  
33 ~~or welfare of the public or the environment.~~ The following requirements apply:

34 a1. The maximum amount of excavated material that may be removed from the site is  
35 10 percent or 15,000 cubic yards of the total amount of cubic yards to be excavated.

36 b2. There shall be a minimum setback of 50 feet from top of bank to any lot line,  
37 easement, and structure.

**Comment [IW13]:** This section was modified to remove the Specific Minor and Specific Major categories in response to the revision of the application process section that removed the Hearing Examiner from final approvals of the major excavations. Since all applications are now approved by the Earthmoving Administrator, the two categories are no longer needed.

**Comment [IW14]:** This was removed due to the changes in the sizes of the exempt ag ponds. It is no longer necessary.

1 | **B3. ~~Minor Excavation for a~~ New Canal or Increasing the Width of a Canal (Canal ~~Minor~~**  
2 | **Excavation).**

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

- 5 |     **a1.** The maximum amount of excavated material that may be removed from a new canal  
6 |         site is 10 percent or 15,000 cubic yards of the total amount of cubic yards to be  
7 |         excavated.
- 8 |     **b2.** A canal top-of-bank may extend to the limits of the easement, right-of-way, or to  
9 |         adjacent lot lines.

10 | **C4. Raising Lot Elevation (RLE).**

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

- 14 |     **a1.** The lot shall contain a habitable dwelling unit on land zoned for residential use.  
15 |     **b2.** The maximum amount of fill that can be placed on a lot of five acres or less is 130  
16 |         cubic yards and of greater than five acres is 260 cubic yards.  
17 |     **e3.** Stockpiles shall be located a minimum of 50 feet from any lot line or easement.  
18 |     **d4.** All areas shall be seeded, sodded, or planted with native vegetation or other  
19 |         landscaping immediately after grading is complete.

20 | **D5. Stockpiling Fill (Stockpiling).**

21 | This is for the purpose of stockpiling ~~excavated~~ material ~~from an excavation~~ on a lot which is  
22 | not otherwise permitted for an earthmoving operation or construction operation.

- 23 |     **1a.** Stockpiling as a principal use of land shall only occur on a lot zoned IL with a Low  
24 |         Intensity Industrial FLUM designation, zoned IG with a Heavy Industrial FLUM  
25 |         designation, zoned EM with a Mineral Resource Extraction FLUM designation, or  
26 |         zoned AG/AE with an Agriculture FLUM designation.
- 27 |     **b2.** A stockpile shall not be located within 50 feet of a lot line or easement, 200 feet of a  
28 |         habitable dwelling unit or institutional use, and 50 feet of an agricultural or  
29 |         industrial structure.
- 30 |     **e3.** All areas used for stockpiling shall be reclaimed by plantings with native  
31 |         groundcover, shrubs, and trees, or proof provided in the form of an approved  
32 |         construction permit that the site will be developed with a legal use after the  
33 |         stockpile has been removed; if in agriculture land use a site visit to confirm use for a  
34 |         bona fide agriculture use subsequent to the stockpiling activity will suffice. If the  
35 |         site is not to be developed with a use, the site shall be planted so that at least 20  
36 |         percent of the area used for the stockpiling activity is covered with native trees and  
37 |         shrubs; the remainder shall be seeded with native grasses or other native plants.

38 | **6E. Filling of an Excavation (Clean Fill).**

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

- 2 a1. Only clean debris as defined in 62-701.200 F.A.C., as may be amended, and clean  
3 gravel, sand, rock, and clay may be placed within an excavation.
- 4 b2. Clean debris shall only be placed to within 10 feet of the proposed finished  
5 elevation of the site. The remaining 10 feet to the proposed finished elevation shall  
6 be filled with soil.
- 7 e3. The type, tonnage and origin of the clean debris shall be reported on a quarterly  
8 basis to the Administrator.
- 9 e4. All filled areas shall be reclaimed by plantings with native groundcover, shrubs, and  
10 trees, or proof provided in the form of an approved construction permit that the site  
11 will be developed with a legal use after the filling has been completed. If the site is  
12 not to be developed with a use, the site shall be planted so that at least 20 percent  
13 of the area used for the stockpiling activity is covered with native trees and shrubs;  
14 the remainder may be seeded with native grasses or other native plants.

15 ~~B. Specific Major Earthmoving Operations.~~

16 ~~1F. Major Excavation for Agricultural Purposes (FARMS-Ag Excavation).~~

17 This is an excavation with a footprint that ~~that~~ is greater than ~~20-15~~ acres, ~~inclusive of all~~  
18 ~~other excavations on-site but exclusive of ditches, that~~ and which will be used for surface  
19 water storage for a bona fide agriculture use. The following requirements apply:

- 20 a1. The lot shall be located in the Rural Service Area and:
  - 21 a.1) Zoned Agriculture General or Agriculture Estate with an Agriculture FLUM  
22 designation.
  - 23 b.2) Zoned Planned Development with a Rural Community Mixed Use FLUM  
24 designation.
- 25 b2. The site shall be approved by or be undergoing approval by a State or Federal  
26 agency involved in cost sharing expenses for the earthmoving activity. For  
27 example, review by the Southwest Florida Water Management District under the  
28 Facilitating Agricultural Resource Management Systems program. An approved  
29 application is required from the appropriate agency prior to the County application  
30 being approved.
- 31 e3. Excavated material shall be retained on-site.
- 32 e4. The following design requirements shall be adhered to:
  - 33 a.1) The maximum excavation footprint and the maximum cumulative acres  
34 of ~~, including~~ all ~~other~~ excavations on-site, ~~but~~ excluding ditches, is 10  
35 percent of the total acreage of crops to be irrigated.
  - 36 b.2) There shall be a minimum setback of 25 feet from top of bank to ~~any lot~~  
37 ~~line not abutting non-residential zoning district~~, 1,000 feet to any ~~lot line~~  
38 ~~abutting residential zoning district~~, and 1,000 feet to any habitable dwelling

Comment [IW15]: This requires further Board discussion

1 unit or institutional structure unless the occupants and owners, if not the  
2 same, of the affected structures consent to a reduced setback.

3 **2G. Major Excavation for Commercial Purposes (Commercial Excavation).**

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

- 6 a1. The lot shall be located in the Rural Service Area and zoned Excavation and Mining  
7 with a Mineral Resource Extraction FLUM designation.
- 8 b2. There shall be a minimum setback of 25 feet from top-of-bank to any ~~lot line not~~  
9 ~~abutting non-residential zoning district~~, 1,000 feet to any ~~lot line abutting~~ residential  
10 zoning ~~district~~, and 1,000 feet to any habitable dwelling unit or institutional  
11 structure unless the occupants and owners, if not the same, of the affected  
12 structures consent to a reduced setback.
- 13 e3. Uses that are considered accessory to a commercial excavation are asphalt and  
14 concrete plants. These uses must be requested and identified within the  
15 earthmoving application and may only exist for the duration of the earthmoving  
16 permit.

17 4. a. ~~Vegetative reclamation of a commercial excavation site requires the following:~~  
18 ~~A depiction showing~~

- 19 a. ~~a~~At least 40 percent of the littoral zone of the reclaimed shoreline of the  
20 excavated area shall be planted with aquatic vegetation. An additional 15  
21 percent of the reclaimed shoreline shall be ~~shown~~ shaped into a littoral shelf  
22 extending no less than 15 feet into the excavated area and designed to have  
23 less than 24 to 20 inches of water during normal water level periods. The  
24 littoral zone and shelf shall be planted with a mixture of native emergent,  
25 floating, and submerged plant species of at least three different species. At  
26 installation, the plants shall cover at least 85 percent of the areas designated  
27 for planting. ~~The reclamation plans shall detail the type and amount of~~  
28 ~~plantings.~~
- 29 b. ~~A depiction of a~~An upland planting area ~~that~~ is required along the reclaimed  
30 perimeter of the excavation footprint. ~~The reclamation plans shall detail the~~  
31 ~~type and amount of plantings.~~The upland planting area shall utilize the  
32 following standards:
- 33 1) Required plant units per 100 feet of the perimeter of the excavated  
34 area shall be 3 canopy trees, 1 accent/understory tree and 5 shrubs.
  - 35 2) The upland planting area shall be a minimum width of 20 feet.
  - 36 3) Canopy trees for use within the buffer include:  
37 Bald Cypress                      Taxodium distichum  
38 Gumbo Limbo                      Bursera simaruba

Comment [IW16]: This subsection was moved from Section 3.5.468 F.

- 1                                    Laurel Oak                                    Quercus laurifolia  
2                                    Live Oak                                    Quercus virginiana  
3                                    Sabal Palm                                    Sabal palmetto  
4                                    Sea Grape                                    Coccoloba uvifera  
5                                    Southern Slash Pine                                    Pinus elliottii var. densa  
6                                    4) Understory trees for use within the buffer include:  
7                                    Florida Privet                                    Forestiera segregate  
8                                    Red Cedar                                    Juniperus virginiana  
9                                    Silver Buttonwood                                    Conocarpus erectus var. sericeus  
10                                    Simpson's Stopper                                    Myrcianthes fragrans  
11                                    Stoppers                                    Eugenia spp. (natives only)  
12                                    Wax Myrtle                                    Myrica cerifera  
13                                    Wild Coffee                                    Psychotria undata  
14                                    5) Shrubs for use within the buffer include:  
15                                    Beautyberry                                    Callicarpa americana  
16                                    Eastern Gammagrass                                    Tripsacum dactyloides  
17                                    Fakahatchee Grass                                    Tripsacum dactyloides  
18                                    Firebush                                    Hamelia patens  
19                                    Firecracker Plant                                    Russelia equisetiformis  
20                                    Florida Privet                                    Forestiera segregate  
21                                    Saw Palmetto                                    Serenoa repens  
22                                    Simpson's Stoppers                                    Myrcianthes fragrans  
23                                    Wax Myrtle                                    Myrica cerifera and cvs.  
24                                    6) In no case shall there be a separation of greater than 50 feet between  
25                                    trees.  
26                                    7) Other indigenous species may be approved by the County for use in  
27                                    the upland planting area.  
28                                    8) Clustering of vegetation may be allowed on a case-by-case basis.  
29                                    9) All planted material shall be Florida #1 grade according to Florida  
30                                    Department of Agriculture and Consumer Services, Grades and  
31                                    Standards; trees shall be minimum three-gallon size; shrubs shall be  
32                                    minimum one (1) gallon size, and minimum height of ~~eighteen (18)~~  
33                                    inches.

34  
35 **Section 3.5.467 Earthmoving Operations not Identified by this Article.**

36 Any operation not identified in this Article shall be reviewed on a case-by-case basis by the  
37 Administrator and will be assigned to an appropriate category.  
38



1 **Section 3.5.468 Specific Earthmoving Permit Application Requirements.**

2 **A. Information Required in an Application.**

3 An application for a Specific ~~Minor or Specific Major~~ Earthmoving Permit shall include, at a  
 4 minimum, the items checked below. The application shall be deemed complete if all of the  
 5 checked information is included in the application. Other information may be required by  
 6 the Administrator upon sufficiency review of the application. The County will accept the  
 7 same application information that an applicant submits to a State or Federal agency, or an  
 8 approved permit, if the applicant chooses to use that information to prove that the  
 9 operation will meet the standards and requirements of this Article.

**Comment [IW17]:** With the removal of the Hearing Examiner as approver, there is no longer a need for two sub-categories.

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

10

Information Required in Application	Specific Minor Earthmoving	Specific Major Earthmoving
Completed application form	✓	✓
Monetary payment	✓	✓
Application Affidavits	✓	✓
Deed or other Proof of Ownership	✓	✓

Information Required in Application	Specific Minor Earthmoving	Specific Major Earthmoving
Location Map	✓	✓
Legal description and boundary survey of the project site	✓	✓
Haul Route Affidavit	✓	✓
Project Narrative	✓	✓
Variance Request	Required if a variance is being requested Section 3.5.476	
Excavation Plans	Required for Ag Minor, Lake Minor, and Canal Minor Excavations	✓
Soil Boring Report	As required by Section 3.5.468D	
Site Plans	Required for RLE, Stockpiling, and Clean Fill	None
Reclamation Plans	Lake Minor and Canal Minor	✓
Reclamation Narrative	Lake Minor and Canal Minor	✓
Environmental Surveys	✓	✓
Environmental Impact Statement	None	✓
Tree Survey and Impact Statement	Required for all except Clean Fill	✓
Hazardous Material Assessment	✓	None
Traffic Impact Analysis	✓	✓
Landscape Plan	As required by: Section 3.5.464, A7b, A14, B1, and B3 Section 3.5.466, A4d, A5c, and A6d	
Stormwater Plan	As required by Section 3.5.464, C3	
Blasting Plan and Fire Marshall Blasting Permit or statement indicating no blasting will occur	Ag Minor, Lake Minor, and Canal Minor	✓
Rock Crushing Plan or statement indicating no rock crushing will occur	Ag Minor, Lake Minor, and Canal Minor	✓
Cement Crushing Plan or statement indicating no cement, or other clean debris, crushing will occur	Clean Fill	None
Copies State and Federal permits or exemption letter	✓	✓

**B. Project Narrative.**

A project narrative shall include the following information:

1. Description of all activity that will take place on-site.
2. Type and amount of material to be moved, removed, or stored.
3. Probable schedule.

- 1 4. Who maintains ownership of the site and operation; who is the responsible party for  
2 the operation.
- 3 5. Proposed legal measures to provide for perpetual maintenance of any common or  
4 dedicated open space, easements, dedications and reservations.
- 5 6. ~~Dust-Erosion~~ control measures.
- 6 7. Noise control measures.
- 7 8. Description of how the site will be secured.

8 **C. Excavation Plans.**

- 9 1. Excavation plans ~~are for excavation operations and~~ shall include the following  
10 information:
  - 11 a. Ownership and boundary lines, including bearings and distances  
12 superimposed over an aerial photo. Out-parcels within the site shall be  
13 clearly indicated along with access to these outparcels.
  - 14 b. Size, shape, depth and location of the proposed excavation, including  
15 recharge trenches and settling ponds.
  - 16 c. Locations of all proposed spoil piles and stockpiles of excavated material.
  - 17 d. Within the site and within one-half mile of the site identify right-of-ways,  
18 easements, and lot ownership; natural physical features such as flowways,  
19 100-year floodplain, wetlands, lakes and critical wildlife habitat; manmade  
20 features such as utility lines, wells, septic systems, storage tanks, drainage  
21 ditches, houses, and barns. Provide the distance from the site and the  
22 excavation footprint to these features.
  - 23 e. Show access roads into the site. Internal haul routes shall be identified along  
24 with roadway specifications, drainage requirements and signage locations  
25 and type. Identify maintenance measures.
  - 26 f. If material is to be hauled off-site, identify all possible external haul routes  
27 within a one mile radius and whether these routes are publicly or privately  
28 maintained. Show clear line of site distances at entranceway from internal  
29 haul route to external haul route. Show what improvements are necessary  
30 to haul routes.
  - 31 g. Topographic survey showing existing and proposed grades related to NGVD.
  - 32 h. Proposed slopes during excavation, include a cross-sectional drawings  
33 referring to NGVD showing the proposed depth(s) of excavation, slope of the  
34 side and depth of water.
  - 35 i. Detailed erosion control methods.
- 36 2. Excavation plans shall include the following if required by proposed excavation  
37 conditions:
  - 38 a. Phases of the excavation.

- b. Location and preservation plan for all wetlands, waterbodies, and other habitats ~~to be preserved~~, including setbacks, ~~and buffers~~ exotic species removal, and any re-vegetation requirements.
- c. Location, preservation and restoration plan for any historic flowways.
- d. Soil borings locations shown in the soil boring report.
- e. Proposed method of de-watering and use of settling ponds.
- f. Location of all staff gauges.
- g. Location of rock crushing, asphalt plant or concrete plant operations.
- h. Location and configuration of any vegetative noise buffers or landscape screening buffers and earthen berms.

Comment [IW18]: This incorporates landscaping requirements.

**D. Site Plans**

Comment [IW19]: This used to be E. under this Section

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

1. Ownership and boundary lines, including bearings and distances.
2. Location of haul routes or access roads.
3. Adjoining and internal right-of-ways, easements, and lot ownership; natural physical features such as flowways, 100-year floodplain, wetlands, lakes and critical wildlife habitat; all manmade features such as utility lines, wells, septic systems, storage tanks, drainage ditches, houses, and barns.
4. Topographical elevations of the site.
5. Proposed elevations, if applicable.
6. Location of stockpiles, if applicable.
7. Detailed erosion control methods.
8. Location and preservation plan for all wetlands, waterbodies, and other habitats, including setbacks, exotic species removal, and any re-vegetation requirements.
9. Location and configuration of any vegetative noise buffers or landscape screening buffers and earthen berms.
10. Location of cement crushing or other operations proposing to alter clean debris.

**E. Soil Boring Report**

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

1. There shall be one boring per 10 acres, there shall be a minimum of two borings per excavation footprint. ~~Additional borings shall occur at every one foot of elevation change within each excavation cell or area.~~ Locations of the test borings are based upon site specific conditions. ~~If wetlands exist on-site, a minimum of two borings per wetland are required, with one located at the edge of the wetland and the second a distance of 25 feet away.~~
2. Soil borings shall extend ~~to either the bottom of the confining zone of the proposed mine aquifer or ten~~ five feet deeper than the proposed depth of the ~~mine cell or area~~ excavation, or to the top of the confining layer ~~whichever is greater.~~

Comment [IW20]: Revised in response to public comment.

Comment [IW21]: Revised in response to public comment.

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

Comment [IW22]: Staff initiated revision

43. Copies of results shall be signed and sealed by an engineer or geologist.

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

Comment [IW23]: Staff initiated revision

#### ~~E. Site Plans~~

Site plans shall include, but not be limited to:

- ~~1. Ownership and boundary lines, including bearings and distances.~~
- ~~2. Location of haul routes or access roads.~~
- ~~3. Adjoining and internal right-of-ways, easements, and lot ownership; natural physical features such as flowways, 100-year floodplain, wetlands, lakes and critical wildlife habitat; all manmade features such as utility lines, wells, septic systems, storage tanks, drainage ditches, houses, and barns.~~
- ~~4. Topographical elevations of the site.~~
- ~~5. Proposed elevations, if applicable.~~
- ~~6. Location of stockpiles, if applicable.~~
- ~~7. Detailed erosion control methods.~~

Comment [IW24]: Moved up to D. under this section

#### F. Reclamation Plans.

1. Reclamation plans for RLE and Stockpiling operations shall include the following, ~~but not be limited to:~~
  - a. A description of the manner in which restructuring ~~and~~, reshaping ~~and re-vegetation~~ will be accomplished and a depiction of the re-vegetation of the site. List the types and amounts of each species used for re-vegetation.
  - b. A description of how the site will be maintained at least five years after the reclamation is complete.
  - ~~c. A depiction of at least two typical cross-sections each, with elevations, generally oriented north to south and east to west, showing areas to be filled, back-filled, reconstructed and/or reshaped. Water elevations and final grades shall also be shown.~~
  - ~~d.~~ A depiction of what natural and manmade features will exist when the reclamation is complete. This requirement includes the ~~depiction~~ location of mitigation or preservation areas established for wildlife species, ~~required~~

fences, walls, ~~vegetative buffers and littoral zones~~ and other structures that will be on the property.

2. Reclamation plans for all other operations shall meet the requirements listed in F.1. above and will also require a depiction of at least two typical cross-sections each, with elevations, generally oriented north to south and east to west, showing areas to be filled, back-filled, reconstructed and/or reshaped. Water elevations and final grades shall also be shown.

~~For Commercial Excavations the following vegetative reclamation features are also required:~~

Comment [IW25]: Moved to Section 3.5.466 G 4

- a. ~~At least 40 percent of the littoral zone of the reclaimed shoreline of the excavated area shall be planted with aquatic vegetation. An additional 15 percent of the reclaimed shoreline shall be shaped into a littoral shelf extending no less than 15 feet into the excavated area and designed to have less than 24 to 20 inches of water during normal water level periods. The littoral zone and shelf shall be planted with a mixture of native emergent, floating, and submerged plant species of at least three different species. At installation, the plants shall cover at least 85 percent of the areas designated for planting. The type and amount of plantings shall be depicted on the reclamation plans.~~
- b. ~~Upland plantings are required along the reclaimed perimeter of the excavation footprint. The type and amount of plantings shall be depicted on the reclamation plans. The upland planting area shall utilize the following standards:~~
- ~~1) Required plant units per 100 feet of the perimeter of the excavated area shall be 3 canopy trees, 1 accent/understory tree and 5 shrubs.~~
  - ~~2) The upland planting area shall be a minimum width of 20 feet.~~
  - ~~3) Canopy trees for use within the buffer include:~~
    - ~~Bald Cypress — Taxodium distichum~~
    - ~~Gumbo Limbo — Bursera simaruba~~
    - ~~Laurel Oak — Quercus laurifolia~~
    - ~~Live Oak — Quercus virginiana~~
    - ~~Sabal Palm — Sabal palmetto~~
    - ~~Sea Grape — Coccoloba uvifera~~
    - ~~Southern Slash Pine — Pinus elliottii var. densa~~
  - ~~4) Understory trees for use within the buffer include:~~
    - ~~Florida Privet — Forestiera segregate~~
    - ~~Red Cedar — Juniperus virginiana~~
    - ~~Silver Buttonwood — Conocarpus erectus var. sericeus~~

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- ~~Simpson's Stopper — Myrcianthes fragrans~~
- ~~Stoppers — Eugenia spp. (natives only)~~
- ~~Wax Myrtle — Myrica cerifera~~
- ~~Wild Coffee — Psychotria undata~~
- ~~5) 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.~~
- ~~6) In no case shall there be a separation of greater than 50 feet between trees.~~
- ~~7) Other indigenous species may be approved by the County for use in the upland planting area.~~
- ~~8) Clustering of vegetation may be allowed on a case-by-case basis.~~
- ~~9) 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.~~

€3. Reclamation plans shall be designed, signed and sealed by a Florida Registered Landscape Architect.

~~G. Reclamation Narrative.~~

~~This narrative shall describe how the site will be reclaimed upon completion of the earthmoving operation.~~

**HG. Environmental Surveys.**

1. All environmental surveys shall have been completed within one year of application submittal.
2. Environmental surveys include:
  - a. FLUCCS map and report of all land covers and forms on the site according to FLUCCS category level 3 at scale of 1 inch equals 200 feet, unless a different scale is approved in writing by the Administrator in advance of application submittal.

Comment [IW26]: Combined with F. above.

- b. A listed species survey performed in accordance with State or Federal survey guidelines.
- c. A tree survey, including identification of all heritage trees.

#### **4. Environmental Impact Statement.**

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

~~1. An EIS shall be prepared by individuals or firms that are qualified in the various disciplines involved in an EIS. The qualifications of every person involved in preparing the statement will be included along with portion(s) they were involved in.~~

~~2. The EIS shall include an analysis of the following:~~ The EIS shall include all drainage calculations, signed, sealed, and dated by an appropriate registered professional, and supporting documentation demonstrating that the proposed project meets the requirements under Environmental Resource Permit (ERP) rules 62-330.301.

a. ~~Integrated hydrologic modeling of surface water and groundwater resources, during natural, operating, and post-construction conditions in normal, wet, and drought scenarios, particularly:~~

~~1) Stacking of water (including sheet flow) up gradient of the operation site, with particular attention paid to the effects of berms, ditches, or other water control structures.~~

~~2) Potential loss of sheet flow or other surface flows down gradient of the operation site.~~

~~3) Potential reductions in flows to creeks, streams, rivers, or other natural surface waters.~~

~~4) The quality of any off-site surface water discharges which may occur under any conditions up to and including a 100-year storm event.~~

~~5) The dimensions of land areas that will experience impacts from the lowering of groundwater levels due to dewatering or other aspects of the excavation.~~

~~6) Impacts to the base flow of surface waters within the subject surface water drainage basin.~~

~~7) Impacts to ground water resulting from increased evaporation from lakes and other post-mining landforms resulting from the excavation.~~

b. Vegetation and wildlife, particularly:

1) Impacts on-site and to adjacent natural communities.

2) Impacts to, and mitigation proposed for, wildlife species that reside on or utilize the site, particularly those listed by the U.S. Fish and



1 Wildlife Service or Florida Fish and Wildlife Conservation Commission  
2 as endangered, threatened, or of special concern.

3 c. Air quality, particularly:

- 4 1) ~~Dust~~ Airborne debris from any excavation, blasting, stockpiling,  
5 sorting, vehicular circulation, or other activity.  
6 2) Any exhaust or other emissions from equipment associated with the  
7 excavation.

8 d. Noise from any equipment, blasting, stockpiling, sorting, vehicular  
9 circulation, or other activity.

10 e. Hazardous materials and other potential contaminants, including any  
11 naturally occurring elements, particularly radiation, that could become  
12 potentially harmful to the public if concentrated by any process associated  
13 with the proposed operation, such as dewatering, settling, stockpiling, and  
14 sorting.

15 3. ~~All calculations, assumptions, survey methodologies, and other technical~~  
16 ~~components of the studies will be documented.~~

17 43. The EIS shall include any other information required by the Administrator due to  
18 unique circumstances.

19 **J. Hazardous Materials Assessment.**

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

23 **K. Traffic Impact Analysis.**

24 The methodology for this analysis will be prescribed by the County's Transportation Planner  
25 Engineer or County Engineer.

26 **L. Landscape Plan.**

27 ~~A Landscape Plan shall depict the reclamation of the site subsequent to the completion of~~  
28 ~~the earthmoving operation. All landscape plans shall be designed, signed and sealed by a~~  
29 ~~Florida Registered Landscape Architect.~~

Comment [IW27]: Combined into C. and D.  
above

30  
31 **Section 3.5.469 Performance Assurance for Land Reclamation (PALR).**

32 **A.** The amount of the fee shall be calculated as required in the fee resolution adopted by the  
33 Board of County Commissioners.

34 **B.** This shall be required of ~~Specific Major Earthmoving~~ Commercial Excavations operations and  
35 may be required for ~~Specific Minor other Earthmoving~~ earthmoving operations in a form  
36 acceptable to the County Attorney. The PALR shall remain in effect throughout the duration  
37 of the permit term, plus one year.

1 C. It is the permit holder's and lot owner's responsibility to reclaim an earthmoving site prior  
2 to the expiration of a permit. Should this action not occur, the County will utilize the PALR  
3 to reclaim the site if no other satisfactory solution has been agreed upon with the permit  
4 holder or lot owner. If a PALR does not exist and the County must reclaim an earthmoving  
5 site, a lien shall be placed on the lot in an amount equal to that expended by the County to  
6 reclaim the site.  
7

8 **Section 3.5.470 Roadway Service Life Reduction Fee (RSLR).**

- 9 A. The amount of the fee shall be calculated as required in the fee resolution adopted by the  
10 Board of County Commissioners.  
11 B. The fee shall be submitted to the County in December of each year that the permit is in  
12 effect.  
13 C. This shall be required of ~~Specific Major Earthmoving~~ **Commercial Excavations-operations**  
14 that meet the conditions of the resolution. The Roadway Service Life Reduction Fee shall  
15 remain in effect throughout the duration of the permit term.  
16

17 **Section 3.5.471 Specific Earthmoving Permit Process and Procedures.**

18 **A. Pre-Application Meetings.**

19 A pre-application conference is mandatory for new applications and Major Modifications.

20 **B. Earthmoving Permit Review Process.**

21 **1. ~~Specific Minor Earthmoving Operation~~ Lake Reconfiguration, Canal Excavation, RLE,  
22 Stockpiling, and Clean Fill.**

- 23 a. Applicants shall submit an application. An application shall ~~be void~~ **expire**  
24 **within one year of the date that it was submitted determined to be complete.**

25 An extension of one year in total of the expiration date of the application  
26 may be requested of the Administrator, provided:

- 27 1) The extension is requested at least ~~14-10 calendar-working~~ **days** prior  
28 to the expiration date.  
29 2) The applicant is able to demonstrate that the extension is required  
30 because of a delay caused by permitting agencies and not to any fault  
31 of the applicant.

- 32 b. The Administrator will review the application for completeness within five  
33 working days of submittal and will notify the applicant of any deficiencies. If  
34 the Administrator deems the application to be incomplete, all review of the  
35 application shall cease until such time as the application is supplemented by  
36 the applicant and deemed complete by the Administrator.

**Comment [IW28]:** Revised in response to public comment.

**Comment [IW29]:** Revised in response to public comment.

- 1 c. Once the Administrator has determined that the application is complete,  
2 sufficiency review will begin. The application will be forwarded to other Staff  
3 for their review.
- 4 d. Staff shall conduct their review and provide the Administrator a report  
5 containing comments and recommendations concerning the content of the  
6 application, whether it should be approved or not approved as submitted  
7 and specific information needed or permit conditions deemed necessary to  
8 comply with the provisions of this Article and other applicable law. Initial  
9 staff review shall be completed within ~~three~~ 60 working days~~months~~ of the  
10 application being deemed complete.
- 11 e. Upon receipt of the aforementioned reports, the Administrator shall  
12 determine whether further information is required from the applicant or a  
13 decision of approval or denial can be made. Should it be determined that  
14 more information is required, the applicant will be informed and all further  
15 review of the application will cease until the information is received.
- 16 f. Once any requested information is received, the Administrator, and other  
17 Staff as appropriate, will conduct further review. Any reviews subsequent to  
18 the initial review shall occur within ~~two~~ 40 working days~~months~~ of the  
19 submittal of new information and the applicant shall then be informed if the  
20 information adequately satisfies the issue in question.
- 21 g. When the Administrator determines that no further information from the  
22 applicant is necessary and all Staff reviews have been finalized, the  
23 Administrator will prepare a letter to the applicant explaining the decision  
24 made, the reasons for the decision, and, if approved, any special conditions  
25 on the operation.
- 26 1) In the event the Administrator approves the application:  
27 a) The applicant shall satisfy any outstanding requirements.  
28 b) A permit shall be issued. The permit holder and the lot owner,  
29 if not the same, shall be held responsible for complying with  
30 all regulations and conditions of the permit and the Code of  
31 Laws and Ordinances of Charlotte County.  
32 c) The permit shall be posted at the site throughout the term of  
33 the activity.
- 34 2) In the event the Administrator does not approve the application the  
35 applicant may appeal the decision to a Hearing Examiner.
- 36 h. Any amount of time taken to review an application above that time allocated  
37 for staff review in this subsection shall be applied to ~~extend~~ the expiration  
38 date of the application.

1 | **2. Specific Major Earthmoving Operation Ag Excavations and Commercial Excavations.**

- 2 | a. Applicants shall submit an application. An application shall ~~be void~~ expire
- 3 | within two years of the date that it was ~~submitted~~ determined to be
- 4 | complete. An extension for one year in total of the expiration date of the
- 5 | application may be requested of the Administrator, provided:
- 6 | 1) The extension is requested at least ~~60-20 calendar-working~~ days prior
- 7 | to the expiration date.
- 8 | 2) The applicant is able to demonstrate that the extension is required
- 9 | because of a delay caused by permitting agencies and not to any fault
- 10 | of the applicant.
- 11 | b. The Administrator will review the application for completeness within ten
- 12 | working days and notify the applicant of any deficiencies. If the
- 13 | Administrator deems the application to be incomplete, all review of the
- 14 | application shall cease until such time as the application is supplemented by
- 15 | the applicant and deemed complete by the Administrator.
- 16 | c. Once the Administrator has determined that the application is complete,
- 17 | sufficiency review will begin. The application will be forwarded to other staff
- 18 | for their review. Initial staff review shall be completed within ~~three months~~
- 19 | ~~of the~~ 60 working days of when the application is deemed complete unless
- 20 | review of the application by a consultant is necessary. If outside review of
- 21 | the application is required, ~~one year~~ 120 working days may be allowed to
- 22 | complete the initial review.
- 23 | d. The applicant is responsible for providing the county with all necessary
- 24 | information. The Administrator shall provide the applicant with written
- 25 | notice or notices of insufficiencies with the application when the initial staff
- 26 | review period is complete. The failure of the Administrator to mention
- 27 | insufficiencies shall not affect the county's right to require that the
- 28 | insufficiencies be addressed by the applicant when noticed.
- 29 | 1) Staff may cease review of the application until such time as an
- 30 | identified insufficiency has been addressed by the applicant.
- 31 | 2) If the applicant submits information to address an insufficiency, the
- 32 | County shall inform the applicant within ~~90-60 working~~ days if the
- 33 | information is adequate to address the issue in question, unless such
- 34 | information needs to be reviewed by a consultant. If a consultant
- 35 | must review the information, ~~eight months~~ 120 working days will be
- 36 | allowed for the review.
- 37 | e. When the Administrator determines that the applicant has provided
- 38 | information to address all issues identified during staff review, the

Comment [IW30]: Revised in response to public comment.

Comment [IW31]: Revised in response to public comment.

Comment [IW32]: Revised in response to public comment.

Comment [IW33]: Revised in response to public comment.

1 Administrator will finalize a Master Report, which shall include findings  
2 related to consistency with the Comprehensive Plan, this Article, and the  
3 Code of Laws and Ordinances of Charlotte County, and will provide an  
4 approval or denial of the application.

5 1) In the event of an approval, the Administrator may require special  
6 conditions to be placed on the operation.

7 a) The applicant shall satisfy any outstanding requirements.

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

12 c) The permit shall be posted at the site throughout the term of  
13 the excavation.

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

18 f. If staff review time exceeds that allocated in this subsection, the total  
19 amount exceeded shall be applied to extend the expiration **date** of the  
20 application.

21  
22 **Section 3.5.472 Specific Earthmoving Permit Approvals.**

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

26  
27 **Section 3.5.473 Specific Earthmoving Permit Appeal of a Decision.**

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

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

36 **B.** If the Hearing Examiner determines that the application does meet the requirements of the  
37 Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County,

**Comment [IW34]:** Revised in response to public comment.

1 the application shall be approved and such determination shall be deemed final. In this  
2 event:

- 3 1. The applicant shall satisfy any outstanding requirements.
- 4 2. A permit shall be issued. The permit holder and the lot owner, if not the same, shall  
5 be responsible for complying with all regulations and conditions of the permit and  
6 the Code of Laws and Ordinances of Charlotte County.
- 7 3. The permit shall be posted at the site throughout the term of the excavation.

8  
9 **Section 3.5.474 ~~Earthmoving Permit~~ Variances to Earthmoving Standards.**

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

- 12 **A.** Variance requests for Standard Earthmoving operations, as well as Lake Reconfiguration,  
13 Canal Excavation, RLE, Stockpiling and Clean Fill ~~e and Specific Minor~~ Earthmoving  
14 operations shall be granted or denied by the Administrator.
- 15 **B.** Variance requests for ~~Specific Major Earthmoving~~ Ag Excavations and Commercial  
16 ~~Excavations-operations~~ shall be granted or denied by a Hearing Examiner.
- 17 **C.** As a condition to any requested Earthmoving Variance, the applicant shall establish the  
18 following prerequisites to the satisfaction of the Administrator or Hearing Examiner before  
19 granting of the Variance:
  - 20 1. The variance requested is not contrary to the public interest or otherwise  
21 detrimental to the public welfare.
  - 22 2. Strict adherence to the provisions of the standards would place an undue burden or  
23 hardship upon the operation due to unique conditions of the site and that hardship  
24 was not caused intentionally by an action of the applicant.
  - 25 3. The granting of a variance would not be injurious to or incompatible with contiguous  
26 uses or to the surrounding neighborhood or to the environment **and would not**  
27 **allow relaxation of State or Federal regulations.**
  - 28 4. The hardship or conditions cannot reasonably be corrected or avoided by the  
29 applicant, there is no reasonable alternative, and the requested variance is the  
30 minimum modification of the standard at issue that will afford relief.
- 31 **D.** Expenses and other monetary considerations are not a basis for proving undue burden or  
32 hardship.
- 33 **E.** The Administrator or Hearing Examiner may add such conditions as deemed necessary in  
34 connection with the granting of any Earthmoving Variance.
- 35 **F.** The specifics of an approved Earthmoving Variance, along with any accompanying  
36 conditions, shall be listed on the permit.

37  
38 **Section 3.5.475 Earthmoving Permit Periods of Permit Validity.**

**Comment [IW35]:** Revised in response to public comment.

- 1 A. The term of a Standard Earthmoving Permit shall not exceed one year unless otherwise  
2 stated on the permit.
- 3 B. The term of a Specific Earthmoving Permit shall commence upon the approval of the permit  
4 by the Administrator, ~~or Hearing Examiner,~~ and will be valid for the following lengths of  
5 time:
- 6 1. The term of ~~Specific Minor Earthmoving~~ Lake Reconfiguration, Canal Excavation, RLE,  
7 Stockpiling and Clean Fill permits shall not exceed five years.
  - 8 2. The term of ~~Specific Major Earthmoving~~ Ag Excavation and Commercial Excavation  
9 permits shall not exceed 10 years.

10 **Section 3.5.476 Earthmoving Permit Modifications to Approved Permits.**

- 11 A. Modifications to an approved permit are approved or denied by the Administrator. In order  
12 for any modification to be approved, the operation shall be in compliance with the  
13 standards, requirements, and conditions under which the permit was issued and all State  
14 and Federal permits shall be valid.

15 **B1. Modifications to extend ~~Extensions to~~ the period of permit validity ~~of an~~  
16 ~~Earthmoving Permit~~ shall comply with the following:**

17 **1a.** For a Standard Earthmoving permit as well as a Lake Reconfiguration, Canal  
18 Excavation, RLE, Stockpiling or Clean Fill permit ~~or Specific Minor Earthmoving~~  
19 ~~permit~~, the request to extend the period of permit validity shall be submitted  
20 at least ~~90~~ **20** working calendar days prior to the permit expiration  
21 date. Requests for extension subsequent to this timeframe shall not be  
22 accepted. Permit extensions may be requested two times for two years each  
23 for a total of four years. Further extensions shall not be permitted.

Comment [IW36]: Revised in response to public comment.

24 **2b.** For a conforming Ag Excavation or Commercial Excavation, ~~Specific Major~~  
25 ~~Earthmoving permit~~, the request to extend the period of permit validity shall  
26 be submitted at least ~~150~~ **40** calendar working days prior to the permit  
27 expiration date. Requests for extension subsequent to this timeframe shall  
28 not be accepted. Permit extensions for ~~Specific Major Earthmoving~~ these  
29 permits may be requested in ten year increments.

Comment [IW37]: Revised in response to public comment.

30 **3c.** Once a permit extension is granted, any new fees **adopted by the Board prior**  
31 **to the renewal of the permit** shall be complied with.

32 **4d.** The Administrator is not obligated to approve an extension if it is determined  
33 that conditions within the vicinity of the earthmoving operation have  
34 changed since the initial approval and the continuing operation of the  
35 earthmoving operation would be detrimental.

- 36 **6B.** If a modification application is not approved within one year of the submittal date, it shall  
37 be considered void.  
38

1 | **DC.** A denial of a modification request may be appealed to a Hearing Examiner.  
2

3 **Section 3.5.477 Earthmoving Permit Inspections.**

- 4 **A.** The Administrator, or designee, shall have the right to inspect the lands affected under this  
5 Article. This right shall extend to lands already permitted to ensure compliance with this  
6 Article and all conditions of the permit, as well as those lands where the applicant has  
7 submitted an application for the issuance of a permit under this Article.  
8 **B.** Inspections of permitted activities shall be performed at least annually. An inspector shall  
9 attempt to give at least 72 hours' advance notice and upon arrival the inspector shall  
10 attempt to contact operating personnel. Inspections needed in response to a complaint  
11 require no advance notice.  
12 **C.** A copy of all required local, State and Federal permits and reports must be available for  
13 inspection on site at all times.  
14 **D.** A copy of the site plan must be available for inspection on site at all times.  
15

16 **Section 3.5.478 Specific Earthmoving Permit Annual Report.**

- 17 **A.** An annual report shall be submitted to the Administrator for each Specific Earthmoving  
18 Permit in the manner as required in the County's reporting form.  
19 **B.** The annual report shall be submitted, including any applicable fees, on or before December  
20 31 of each calendar year following the permit issuance date and shall include all activity  
21 through October 1 of that calendar year. For permits issued on or after October 1 of any  
22 calendar year, the Applicant may submit the first annual report on the second December 31  
23 following the permit issuance and on December 31 of each calendar year thereafter.  
24 **C.** Failure to file the required annual report shall be grounds for suspension of the activity  
25 authorized by the permit; however, an extension of time for filing may be granted by the  
26 Administrator for reasonable cause upon a written request received by the Administrator  
27 prior to the date that the report is due.  
28

29 **Section 3.5.479 Earthmoving Permit Monitoring Reports**

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

33 **Section 3.5.480 Earthmoving Permit Violations**

- 34 **A.** Any person with any property interest in an earthmoving site as well as the permittee shall  
35 be responsible for any violation of this Article.  
36 **B.** It is unlawful for any person to violate or fail to comply with the provisions of this Article,  
37 any provisions adopted by reference herein, and of a permit issued pursuant to this Article.  
38 If at any time during the term of a permit, the Administrator finds that the provisions of an



1 Earthmoving Permit, this Article, or other applicable law have been violated, the  
2 Administrator may issue a stop work order and, if necessary, initiate a violation of the  
3 provisions of this Article before the Code Enforcement Board. The stop work order shall  
4 remain in effect until the activity is brought into compliance with the permit.

- 5 C. The validity of a permit shall terminate if there is evidence that the permit is being used for  
6 or the land is being prepared for a use other than what was stated in the application, **or**  
7 **otherwise lawfully approved by the County**. Such evidence may include submittal of an  
8 application for a building permit, a special exception, a rezone, a site plan, or similar item.
- 9 D. If an earthmoving operation occurs without an approved, required permit, the violator(s)  
10 shall be required to pay quadruple the regular fee for the application appropriate for that  
11 activity, in addition to any code violation fees. The County reserves the right to deny the  
12 application and require the lot owner to restore the lot to its previous condition.

Comment [IW38]: Revised in response to public comment.

#### 14 Section 3.5.481 Definitions

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

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

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

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

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

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

28 *Earthmoving* means any and all activities resulting in the repositioning of earth and the  
29 transporting and installing of earth.

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

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

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

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

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

1 *Filling* means the act of placing fill on land.

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

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

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

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

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

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

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

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

Comment [IW39]: Revised in response to public comment.

27 *PALR* means Performance Assurance for Land Reclamation

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

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

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