

1 PART III - LAND DEVELOPMENT AND GROWTH MANAGEMENT

2 Chapter 3-5 - PLANNING AND DEVELOPMENT

3 **Article XXIII. Earthmoving**

4
5 **Section 3.5.457 Intent and Purpose.**

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

11
12 **Section 3.5.458 Applicability.**

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

18
19 **Section 3.5.459 Earthmoving Operations.**

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

- 21 **A.** The earthmoving operation is exempt per this Article.
- 22 **B.** A Construction Permit has been approved.
- 23 **C.** A Standard Earthmoving Permit has been approved.
- 24 **D.** A Specific Earthmoving Permit has been approved.

25
26 **Section 3.5.560 Application Requirement.**

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

29
30 **Section 3.5.461 Staff Review and Action.**

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

33
34 **Section 3.5.462 Nonconformities.**

35 An earthmoving operation that has been approved by the County, which has a valid permit on the
36 effective date of this Article and which is made nonconforming by this Article, may continue to operate
37 in accordance with the regulations under which it was approved. Any request for modification, except

1 for the two modifications listed below, shall require the operation to come into compliance with this
2 Article, the Comprehensive Plan, and the Land Development Regulations:

- 3 **A.** A request to transfer the permit to a new permit holder.
- 4 **B.** A request to renew the permit beyond the original expiration date, or the expiration date as
5 modified by legislatively allowed extensions.
 - 6 1. A request to renew a permit for a nonconforming operation may only be approved if
7 all of the following conditions are met at the time of renewal:
 - 8 a. The operation is in compliance with the standards, requirements, and
9 conditions under which the permit was issued.
 - 10 b. There are no changes to the operation.
 - 11 c. All local, State, and Federal permits are valid.
 - 12 2. The operation shall comply with any new fees that have been adopted prior to the
13 renewal date.

14
15 **Section 3.5.463 Exempt Earthmoving Operations.**

- 16 **A.** Notification to the County shall not be required for the following earthmoving operations:
 - 17 1. Grave digging.
 - 18 2. Well construction.
 - 19 3. Maintenance dredging of canals and stormwater ponds. Publicly-funded
20 maintenance dredging shall not occur within 15 feet of a seawall and 10 feet of a
21 piling support structure.
 - 22 4. Plowing, tilling and other similar soil alteration when in association with the
23 cultivation of crops for human or animal consumption, for renewable energy
24 manufacture, or for silviculture operations.
 - 25 5. Flower gardening and landscaping when conducted on a lot containing a habitable
26 dwelling unit. The following are limits to the amount of earth that may be placed on
27 the lot within a five year period for gardening and landscaping purposes:
 - 28 a. For a lot of one-half acre or less, thirty-two cubic yards.
 - 29 b. For a lot of greater than one-half acre and less than two and one-half acres,
30 sixty-two cubic yards.
 - 31 c. For a lot of two and one-half acres or greater, ninety-two cubic yards.
 - 32 6. Garden supply retailing or wholesaling. The stockpiling of loose soil, gravel, mulch,
33 and other similar gardening materials that are accessory to the business.
 - 34 7. Construction of nonresidential farm buildings.
 - 35 8. Construction of public roads and associated stormwater infrastructure.
 - 36 9. An excavation that is less than or equal to three acres for use as a livestock watering
37 pond, irrigation pond, or other bona fide agriculture use. The size of the excavation
38 footprint is inclusive of all other excavations on-site but exclusive of ditches.

1 **B.** Application to the County in order to confirm the exempt status of this earthmoving
2 operation shall be required:

3
4 1. An excavation that is larger than three acres but less than or equal to ten acres to be
5 used as a livestock watering pond, aquaculture pond, irrigation pond, or similar bona
6 fide agriculture use. The size of the excavation footprint is inclusive of all other
7 excavations on-site but exclusive of ditches. These operations shall meet the
8 following requirements:

9 a. Location

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

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

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

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

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

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

23 b. All excavated material shall be retained on-site; the manner in which the
24 material will be permanently disposed shall be described and illustrated.

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

28 d. The minimum setback from top of bank to any lot line, easement, and
29 structure shall be 10 feet.

30
31 **Section 3.5.464 Operation Standards.**

32 **A. General Earthmoving Operation Standards.**

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

34 1. Hours of Operation

35 a. In the Rural Service Area and in the Urban Service Area of the Babcock DRI,
36 an earthmoving operation located within two miles of a dwelling unit in
37 existence at the time of permitting, shall only conduct operations between
38 the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and between

1 the hours of 7:00 a.m. and 12:00 p.m. on Saturday, unless otherwise
2 approved by a Hearing Examiner through the Earthmoving Permit Variance
3 procedure. If there is no dwelling unit within two miles, the hours of
4 operation are not restricted.

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

- 9 2. An earthmoving operation shall not have an adverse impact on the quality or
10 quantity of groundwater or surface water of surrounding or downstream properties.
- 11 3. An earthmoving operation shall not impede or destroy historic flowways. All historic
12 flowways on the earthmoving operation site shall be protected and, if necessary due
13 to degradation, restored.
- 14 4. An earthmoving operation shall not have an adverse impact on the 100-year
15 floodplain.
- 16 5. An earthmoving operation shall not impact off-site drainage.
- 17 6. An earthmoving operation shall not have an adverse impact on environmentally
18 sensitive habitat or any listed species either on-site or off-site.
- 19 7. An earthmoving operation shall protect wetlands and other surface waterbodies.
 - 20 a. There shall be a minimum setback of 50 feet, vegetated with native species,
21 from any activity associated with an earthmoving operation to:
 - 22 1) Any on-site wetland, unless mitigation for its destruction is approved,
23 and any on-site waterbody that is not integral to the excavation
24 activity.
 - 25 2) Any off-site wetlands or waterbodies.
 - 26 b. No activity other than the removal of exotic invasive species shall take place
27 within this setback. Depending on the duration and intensity of the activity,
28 plantings of native vegetation may be required within the buffer.
 - 29 c. Sediment barriers, fencing, and signage, as necessary depending on the
30 activity, shall be placed along the outside edge of the 50 foot setback as
31 protection.
- 32 8. An earthmoving operation shall be operated in such a manner that airborne debris
33 emissions are minimized.
- 34 9. An earthmoving operation shall protect native topsoils to the greatest extent
35 practicable. Any site which is identified by the Natural Resource Conservation
36 Service as devoid of native topsoils shall be exempt from this requirement. Specific
37 Major Earthmoving operations are exempt from this requirement.
 - 38 a. The topsoil that occurs on a lot prior to development shall be retained or

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.

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.

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

2. All slopes of four horizontal to one vertical or steeper shall be sodded or otherwise stabilized in accordance with guidelines of the Natural Resource Conservation Service. In the event that the slope is a temporary result of earthmoving activities associated with development of a site and said slope will be modified during the length of the permit, stabilization shall not be required.
3. All swales and other manmade, nonstructural drainage conveyances shall be stabilized with perennial grass cover; application may be through sodding, hydroseeding, or other methods which achieve stabilization and are approved by the County. In the event that the bottom of the conveyance is below seasonal high groundwater levels, grass cover shall be required to extend down to the seasonal high groundwater line only.

C. Excavation Specific Operation Standards.

The following additional standards apply to excavation operations.

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

1 8. Haul routes:

- 2 a. To the greatest extent possible, internal haul routes shall not be located
3 within 250 feet of the lot boundary of the site, except at the lot exit and
4 entry point.
- 5 b. An apron is required at the terminus of the internal haul route where it
6 intersects the external haul route. Aprons shall be built to the specifications
7 of the County Engineer.
- 8 c. The use of haul routes shall not have undue impact on persons and
9 properties along or in proximity to a haul route.
- 10 d. It shall be the responsibility of the permit holder to mitigate impacts arising
11 from the use of haul routes. Required mitigation measures may include any
12 or all of the following:
- 13 1) Watering and other dust control measures.
 - 14 2) Cleanup of material over spills.
 - 15 3) Maintenance grading of unpaved roads, shoulder grading and
16 restoration.
 - 17 4) Pavement maintenance, including resurfacing, reconstruction, and
18 patching.
 - 19 5) Safety improvements such as striping barrier rails, turn and
20 acceleration lanes.
- 21 e. If a privately maintained right-of-way is used to gain access to an operation
22 site, the applicant shall supply an affidavit indicating that they have legal use
23 of that right-of-way for a haul route.

24 **D. Filling, Grading, Stockpiling Specific Operation Standards.**

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

- 26 1. All drainage leaving development sites shall be filtered by sediment barriers. It shall
27 be the responsibility of the developer to maintain the effectiveness of filtration by
28 regular clearing of captured sediments or by refurbishment, as necessary. Captured
29 sediments are to be disposed of on upland portions of the development site.
- 30 2. Best Management Practices shall be used to barricade the toe of all exposed slopes
31 which meet or exceed four horizontal to one vertical. These shall be placed and
32 maintained such that drainage will not overflow or bypass the barrier and shall
33 remain in place until the slope is leveled or permanently stabilized.
- 34 3. All graded areas of one acre or greater which will result in exposure of denuded soil
35 during the months of November through March shall employ dust control
36 procedures consistent with the guidelines of the Natural Resource Conservation
37 Service or the FDEP Florida Development Manual.
- 38

1 **Section 3.5.465 Standard Earthmoving and Construction Permits.**

2 The following activities shall require County review and approval prior to the commencement of any
3 earthmoving activity; review and approval by the Earthmoving Administrator is not required. No
4 earthmoving activity shall occur on-site prior to the approval of the permit. A maximum of 10 percent
5 or 15,000 cubic yards, whichever is greater, of the total amount of cubic yards to be excavated may be
6 removed from a development site approved under a Standard Earthmoving or Construction Permit.
7 [For a Development of Regional Impact (DRI), the development site shall mean any of the area within
8 the DRI boundary.] Stockpiling is considered an accessory to these earthmoving activities but shall only
9 be allowed for material used on the development site and cease when there is no longer a valid permit
10 for the site.

11 **A. Standard Earthmoving Permits.**

12 The following activities require a Standard Earthmoving Permit.

- 13 1. Earthmoving activities for subdivisions, multi-family, commercial, and industrial site
14 development which includes approval of earthmoving activities that occur prior to
15 approval of a construction permit or final plat, such as site grading, stormwater and
16 other utility installation, and road construction. This review process will occur
17 simultaneous with the Site Plan Review process and the approved Standard
18 Earthmoving Permit will be given to the applicant when the project receives Final
19 Site Plan approval. Earthmoving in association with construction of a building on the
20 development site may be otherwise reviewed and approved through the
21 Construction Permit process.
- 22 2. Earthmoving activities associated with the creation of residential ponds. This
23 activity shall meet the following requirements:
 - 24 a. The lot shall contain a habitable dwelling unit on land zoned for residential
25 use.
 - 26 b. The following design requirements are adhered to:
 - 27 1) The maximum excavation footprint shall be equal to or less than ten
28 percent of the lot or one acre, whichever is less, inclusive of all
29 excavations on-site.
 - 30 2) The depth shall not exceed 12 feet.
 - 31 3) There shall be a minimum setback of 25 feet from top of bank to any
32 lot line, easement, and structure.
- 33 3. Earthmoving activities associated with the creation of tracks and trails used by off-
34 road vehicles, motorbikes, bicycles and other similar apparatuses.
- 35 4. Earthmoving activities associated with the repair, replacement or expansion of
36 septic tanks and drain fields.

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

23 **B. Construction Permits.**

24 This subsection is applicable to activities that are not listed in subsection A above. The
25 permitting for the installation of irrigation pipe, commercial landscaping, slabs, driveways,
26 seawall construction, construction or destruction of pools and buildings, tree removal and
27 such other similar development activities shall be conducted as usual through the applicable
28 County department and the applicants for these permits are exempt from obtaining a
29 separate permit for earthmoving associated with these activities. However, the
30 earthmoving standards shall continue to apply to these activities. Activities that are first
31 reviewed through Site Plan Review should have obtained a Standard Earthmoving Permit
32 for much of the earthmoving associated with that activity, such as the installation of
33 utilities, roads, and stormwater infrastructure.

34
35 **Section 3.5.466 Specific Earthmoving Permits.**

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

1 **A. Specific Minor Earthmoving Operations.**

2 **1. Minor Excavation for Agricultural Purposes (Ag Minor Excavation).**

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

- 7 a. If the lot is located in the Rural Service Area, it shall have a consistent zoning
8 and Future Land Use Map designation that allows agriculture:
- 9 1) Zoned Agriculture General or Agriculture Estate with an Agriculture
10 FLUM designation.
 - 11 2) Zoned Excavation and Mining with a Mineral Resource Extraction
12 FLUM designation.
 - 13 3) Zoned Planned Development with a Rural Community Mixed Use
14 FLUM designation.
 - 15 4) Zoned Residential Estates-1 or -5 with a Rural Estate Residential FLUM
16 designation.
- 17 b. If the lot is located in the Urban Service Area, it shall have a consistent zoning
18 and FLUM designation that allows agriculture or a vested bona fide
19 agriculture use.
- 20 c. All excavated material shall be retained on-site.
- 21 d. There shall be a minimum setback of 50 feet from top of bank to any lot line,
22 easement and structure.

23 **2. Minor Excavation for Reconfiguration of a Lake (Lake Minor Excavation).**

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

- 30 a. The maximum amount of excavated material that may be removed from the
31 site is 10 percent or 15,000 cubic yards of the total amount of cubic yards to
32 be excavated.
- 33 b. There shall be a minimum setback of 50 feet from top of bank to any lot line,
34 easement, and structure.

35 **3. Minor Excavation for a New Canal or Increasing the Width (Canal Minor
36 Excavation).**

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

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

4. Raising Lot Elevation (RLE).

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

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

5. Stockpiling Fill (Stockpiling).

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

- a. Stockpiling as a principal use of land shall only occur on a lot zoned IL with a Low Intensity Industrial FLUM designation, zoned IG with a Heavy Industrial FLUM designation, zoned EM with a Mineral Resource Extraction FLUM designation, or zoned AG/AE with an Agriculture FLUM designation.
- b. A stockpile shall not be located within 50 feet of a lot line or easement, 200 feet of a habitable dwelling unit or institutional use, and 50 feet of an agricultural or industrial structure.
- c. All 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 in agriculture land use a site visit to confirm use for a bona fide agriculture use subsequent to the stockpiling activity will suffice. 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.

6. Filling of an Excavation (Clean Fill).

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

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

17 **B. Specific Major Earthmoving Operations.**

18 **1. Major Excavation for Agricultural Purposes (FARMS Excavation).**

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

- 22 a. The lot shall be located in the Rural Service Area and:
 - 23 1) Zoned Agriculture General or Agriculture Estate with an Agriculture
24 FLUM designation.
 - 25 2) Zoned Planned Development with a Rural Community Mixed Use
26 FLUM designation.
- 27 b. The site shall be approved by or be undergoing approval by a State or Federal
28 agency involved in cost sharing expenses for the earthmoving activity. For
29 example, review by the Southwest Florida Water Management District under
30 the Facilitating Agricultural Resource Management Systems program. An
31 approved application is required from the appropriate agency prior to the
32 County application being approved.
- 33 c. Excavated material shall be retained on-site.
- 34 d. The following design requirements shall be adhered to:
 - 35 1) The maximum excavation footprint, including all other excavations
36 on-site but excluding ditches, is 10 percent of the acreage to be
37 irrigated.

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

2. Major Excavation for Commercial Purposes (Commercial Excavation).

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

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

Section 3.5.467 Earthmoving Operations not Identified by this Article.

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

Section 3.5.468 Specific Earthmoving Permit Application Requirements.

A. Information Required in an Application.

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

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	✓	✓

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B. Project Narrative.

A project narrative shall include the following information:

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

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

- b. Location and preservation plan for all wetlands and other habitats to be preserved, including setbacks and buffers.
- 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.

D. Soil Boring Report

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

1. There shall be a minimum of two borings per excavation. 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 feet deeper than the proposed depth of the mine cell or area, whichever is greater.
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.
4. 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.

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.

1 7. Detailed erosion control methods.

2 **F. Reclamation Plans.**

3 1. Reclamation plans shall include, but not be limited to:

- 4 a. A description of the manner in which restructuring, reshaping and re-
5 vegetation will be accomplished.
- 6 b. A description of how the site will be maintained at least five years after the
7 reclamation is complete.
- 8 c. A depiction of at least two typical cross-sections each, with elevations,
9 generally oriented north to south and east to west, showing areas to be
10 filled, back-filled, reconstructed and/or reshaped. Water elevations and final
11 grades shall also be shown.
- 12 d. A depiction of what natural and manmade features will exist when the
13 reclamation is complete. This requirement includes the depiction of
14 mitigation or preservation areas established for wildlife species, required
15 fences, walls, vegetative buffers and littoral zones.

16 2. For Commercial Excavations the following vegetative reclamation features are also
17 required:

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

- | | | |
|----|---|----------------------------------|
| 1 | Live Oak | Quercus virginiana |
| 2 | Sabal Palm | Sabal palmetto |
| 3 | Sea Grape | Coccoloba uvifera |
| 4 | Southern Slash Pine | Pinus elliottii var. densa |
| 5 | 4) Understory trees for use within the buffer include: | |
| 6 | Florida Privet | Forestiera segregate |
| 7 | Red Cedar | Juniperus virginiana |
| 8 | Silver Buttonwood | Conocarpus erectus var. sericeus |
| 9 | Simpson's Stopper | Myrcianthes fragrans |
| 10 | Stoppers | Eugenia spp. (natives only) |
| 11 | Wax Myrtle | Myrica cerifera |
| 12 | Wild Coffee | Psychotria undata |
| 13 | 5) Shrubs for use within the buffer include: | |
| 14 | Beautyberry | Callicarpa americana |
| 15 | Eastern Gammagrass | Tripsacum dactyloides |
| 16 | Fakahatchee Grass | Tripsacum dactyloides |
| 17 | Firebush | Hamelia patens |
| 18 | Firecracker Plant | Russelia equisetiformis |
| 19 | Florida Privet | Forestiera segregate |
| 20 | Saw Palmetto | Serenoa repens |
| 21 | Simpson's Stoppers | Myrcianthes fragrans |
| 22 | Wax Myrtle | Myrica cerifera and cvs. |
| 23 | 6) In no case shall there be a separation of greater than 50 feet between | |
| 24 | trees. | |
| 25 | 7) Other indigenous species may be approved by the County for use in | |
| 26 | the upland planting area. | |
| 27 | 8) Clustering of vegetation may be allowed on a case-by-case basis. | |
| 28 | 9) All planted material shall be Florida #1 grade according to Florida | |
| 29 | Department of Agriculture and Consumer Services, Grades and | |
| 30 | Standards; trees shall be minimum three-gallon size; shrubs shall be | |
| 31 | minimum one (1) gallon size, and minimum height of eighteen (18) | |
| 32 | inches. | |
| 33 | c. Reclamation plans shall be designed, signed and sealed by a Florida | |
| 34 | Registered Landscape Architect. | |

G. Reclamation Narrative.

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

H. Environmental Surveys.

- 1 1. All environmental surveys shall have been completed within one year of application
- 2 submittal.
- 3 2. Environmental surveys include:
- 4 a. FLUCCS map and report of all land covers and forms on the site according to
- 5 FLUCCS category level 3 at scale of 1 inch equals 200 feet, unless a different
- 6 scale is approved in writing by the Administrator in advance of application
- 7 submittal.
- 8 b. A listed species survey performed in accordance with State or Federal survey
- 9 guidelines.
- 10 c. A tree survey, including identification of all heritage trees.

11 **I. Environmental Impact Statement.**

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

- 16 1. An EIS shall be prepared by individuals or firms that are qualified in the various
17 disciplines involved in an EIS. The qualifications of every person involved in
18 preparing the statement will be included along with portion(s) they were involved in.
- 19 2. The EIS shall include an analysis of the following:
 - 20 a. Integrated hydrologic modeling of surface water and groundwater resources,
21 during natural, operating, and post-construction conditions in normal, wet,
22 and drought scenarios, particularly:
 - 23 1) Stacking of water (including sheet flow) up gradient of the operation
24 site, with particular attention paid to the effects of berms, ditches, or
25 other water control structures.
 - 26 2) Potential loss of sheet flow or other surface flows down gradient of
27 the operation site.
 - 28 3) Potential reductions in flows to creeks, streams, rivers, or other
29 natural surface waters.
 - 30 4) The quality of any off-site surface water discharges which may occur
31 under any conditions up to and including a 100-year storm event.
 - 32 5) The dimensions of land areas that will experience impacts from the
33 lowering of groundwater levels due to dewatering or other aspects of
34 the excavation.
 - 35 6) Impacts to the base flow of surface waters within the subject surface
36 water drainage basin.

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

4 b. Vegetation and wildlife, particularly:

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

6 2) Impacts to, and mitigation proposed for, wildlife species that reside
7 on or utilize the site, particularly those listed by the U.S. Fish and
8 Wildlife Service or Florida Fish and Wildlife Conservation Commission
9 as endangered, threatened, or of special concern.

10 c. Air quality, particularly:

11 1) Dust from any excavation, blasting, stockpiling, sorting, vehicular
12 circulation, or other activity.

13 2) Any exhaust or other emissions from equipment associated with the
14 excavation.

15 d. Noise from any equipment, blasting, stockpiling, sorting, vehicular
16 circulation, or other activity.

17 e. Hazardous materials and other potential contaminants, including any
18 naturally occurring elements, particularly radiation, that could become
19 potentially harmful to the public if concentrated by any process associated
20 with the proposed operation, such as dewatering, settling, stockpiling, and
21 sorting.

22 3. All calculations, assumptions, survey methodologies, and other technical
23 components of the studies will be documented.

24 4. The EIS shall include any other information required by the Administrator due to
25 unique circumstances.

26 **J. Hazardous Materials Assessment.**

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

30 **K. Traffic Impact Analysis.**

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

33 **L. Landscape Plan.**

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

37
38 **Section 3.5.469 Performance Assurance for Land Reclamation (PALR).**

- 1 **A.** The amount of the fee shall be calculated as required in the fee resolution adopted by the
2 Board of County Commissioners.
- 3 **B.** This shall be required of Specific Major Earthmoving operations and may be required for
4 Specific Minor Earthmoving operations in a form acceptable to the County Attorney. The
5 PALR shall remain in effect throughout the duration of the permit term, plus one year.
- 6 **C.** It is the permit holder's and lot owner's responsibility to reclaim an earthmoving site prior
7 to the expiration of a permit. Should this action not occur, the County will utilize the PALR
8 to reclaim the site if no other satisfactory solution has been agreed upon with the permit
9 holder or lot owner. If a PALR does not exist and the County must reclaim an earthmoving
10 site, a lien shall be placed on the lot in an amount equal to that expended by the County to
11 reclaim the site.

12
13 **Section 3.5.470 Roadway Service Life Reduction Fee (RSLR).**

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

21
22 **Section 3.5.471 Specific Earthmoving Permit Process and Procedures.**

23 **A. Pre-Application Meetings.**

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

25 **B. Earthmoving Permit Review Process.**

26 **1. Specific Minor Earthmoving Operation.**

- 27 a. Applicants shall submit an application. An application shall be void within one
28 year of the date that it was submitted. An extension of one year in total of
29 the expiration date of the application may be requested of the Administrator,
30 provided:
 - 31 1) The extension is requested at least 14 calendar days prior to the
32 expiration date.
 - 33 2) The applicant is able to demonstrate that the extension is required
34 because of a delay caused by permitting agencies and not to any fault
35 of the applicant.
- 36 b. The Administrator will review the application for completeness within five
37 working days of submittal and will notify the applicant of any deficiencies. If
38 the Administrator deems the application to be incomplete, all review of the

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

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

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

4 **2. Specific Major Earthmoving Operation.**

5 a. Applicants shall submit an application. An application shall be void within
6 two years of the date that it was submitted. An extension for one year in
7 total of the expiration date of the application may be requested of the
8 Administrator, provided:

9 1) The extension is requested at least 60 calendar days prior to the
10 expiration date.

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

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

19 c. Once the Administrator has determined that the application is complete,
20 sufficiency review will begin. The application will be forwarded to other staff
21 for their review. Initial staff review shall be completed within three months
22 of the day the application is deemed complete unless review of the
23 application by a consultant is necessary. If outside review of the application
24 is required, one year may be allowed to complete the initial review.

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

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

33 2) If the applicant submits information to address an insufficiency, the
34 County shall inform the applicant within 90 days if the information is
35 adequate to address the issue in question, unless such information
36 needs to be reviewed by a consultant. If a consultant must review the
37 information, eight months will be allowed for the review.

- 1 e. When the Administrator determines that the applicant has provided
2 information to address all issues identified during staff review, the
3 Administrator will finalize a Master Report, which shall include findings
4 related to consistency with the Comprehensive Plan, this Article, and the
5 Code of Laws and Ordinances of Charlotte County, and will provide an
6 approval or denial of the application.
- 7 1) In the event of an approval, the Administrator may require special
8 conditions to be placed on the operation.
- 9 a) The applicant shall satisfy any outstanding requirements.
10 b) A permit shall be issued. The permit holder and the lot owner,
11 if not the same, shall be responsible for complying with all
12 regulations and conditions of the permit and the Code of Laws
13 and Ordinances of Charlotte County.
14 c) The permit shall be posted at the site throughout the term of
15 the excavation.
- 16 2) In the event of a denial, the applicant may appeal the denial to a
17 Hearing Examiner. The applicant shall indicate the decision to appeal
18 the denial in writing to the Administrator within two months of the
19 date of the Master Report.
- 20 f. If staff review time exceeds that allocated in this subsection, the total
21 amount exceeded shall be applied to extend the expiration of the
22 application.
23

24 **Section 3.5.472 Specific Earthmoving Permit Approvals.**

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

28 **Section 3.5.473 Specific Earthmoving Permit Appeal of a Decision.**

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

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

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.**

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

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

35
36 **Section 3.5.475 Earthmoving Permit Periods of Permit Validity.**

- 37 **A.** The term of a Standard Earthmoving Permit shall not exceed one year unless otherwise
38 stated on the permit.

- 1 **B.** The term of a Specific Earthmoving Permit shall commence upon the approval of the permit
2 by the Administrator, or Hearing Examiner, and will be valid for the following lengths of
3 time:
4 1. The term of Specific Minor Earthmoving permits shall not exceed five years.
5 2. The term of Specific Major Earthmoving permits shall not exceed 10 years.
6

7 **Section 3.5.476 Earthmoving Permit Modifications.**

- 8 **A.** Modifications to an approved permit are approved or denied by the Administrator. In order
9 for any modification to be approved, the operation shall be in compliance with the
10 standards, requirements, and conditions under which the permit was issued and all State
11 and Federal permits shall be valid.
12 **B.** Extensions to the period of permit validity of an Earthmoving Permit:
13 1. For a Standard Earthmoving or Specific Minor Earthmoving permit, the request to
14 extend the period of permit validity shall be submitted at least 90 calendar days
15 prior to the permit expiration date. Requests for extension subsequent to this
16 timeframe shall not be accepted. Permit extensions may be requested two times for
17 two years each for a total of four years. Further extensions shall not be permitted.
18 2. For a Specific Major Earthmoving permit, the request to extend the period of permit
19 validity shall be submitted at least 150 calendar days prior to the permit expiration
20 date. Requests for extension subsequent to this timeframe shall not be
21 accepted. Permit extensions for Specific Major Earthmoving permits may be
22 requested in ten year increments.
23 3. Once a permit extension is granted, any new fees shall be complied with.
24 4. The Administrator is not obligated to approve an extension if it is determined that
25 conditions within the vicinity of the earthmoving operation have changed since the
26 initial approval and the continuing operation of the earthmoving operation would be
27 detrimental.
28 **C.** If a modification application is not approved within one year of the submittal date, it shall
29 be considered void.
30 **D.** A denial of a modification request may be appealed to a Hearing Examiner.
31

32 **Section 3.5.477 Earthmoving Permit Inspections.**

- 33 **A.** The Administrator, or designee, shall have the right to inspect the lands affected under this
34 Article. This right shall extend to lands already permitted to ensure compliance with this
35 Article and all conditions of the permit, as well as those lands where the applicant has
36 submitted an application for the issuance of a permit under this Article.
37 **B.** Inspections of permitted activities shall be performed at least annually. An inspector shall
38 attempt to give at least 72 hours' advance notice and upon arrival the inspector shall

1 attempt to contact operating personnel. Inspections needed in response to a complaint
2 require no advance notice.

3 C. A copy of all required local, State and Federal permits and reports must be available for
4 inspection on site at all times.

5 D. A copy of the site plan must be available for inspection on site at all times.
6

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

8 A. An annual report shall be submitted to the Administrator for each Specific Earthmoving
9 Permit in the manner as required in the County's reporting form.

10 B. The annual report shall be submitted, including any applicable fees, on or before December
11 31 of each calendar year following the permit issuance date and shall include all activity
12 through October 1 of that calendar year. For permits issued on or after October 1 of any
13 calendar year, the Applicant may submit the first annual report on the second December 31
14 following the permit issuance and on December 31 of each calendar year thereafter.

15 C. Failure to file the required annual report shall be grounds for suspension of the activity
16 authorized by the permit; however, an extension of time for filing may be granted by the
17 Administrator for reasonable cause upon a written request received by the Administrator
18 prior to the date that the report is due.
19

20 **Section 3.5.479 Earthmoving Permit Monitoring Reports**

21 Copies of all reports required by State or Federal agencies shall also be simultaneously submitted to
22 the Administrator.
23

24 **Section 3.5.480 Earthmoving Permit Violations**

25 A. Any person with any property interest in an earthmoving site as well as the permittee shall
26 be responsible for any violation of this Article.

27 B. It is unlawful for any person to violate or fail to comply with the provisions of this Article,
28 any provisions adopted by reference herein, and of a permit issued pursuant to this Article.
29 If at any time during the term of a permit, the Administrator finds that the provisions of an
30 Earthmoving Permit, this Article, or other applicable law have been violated, the
31 Administrator may issue a stop work order and, if necessary, initiate a violation of the
32 provisions of this Article before the Code Enforcement Board. The stop work order shall
33 remain in effect until the activity is brought into compliance with the permit.

34 C. The validity of a permit shall terminate if there is evidence that the permit is being used for
35 or the land is being prepared for a use other than what was stated in the application. Such
36 evidence may include submittal of an application for a building permit, a special exception,
37 a rezone, a site plan, or similar item.

1 D. If an earthmoving operation occurs without an approved, required permit, the violator(s)
2 shall be required to pay quadruple the regular fee for the application appropriate for that
3 activity, in addition to any code violation fees. The County reserves the right to deny the
4 application and require the lot owner to restore the lot to its previous condition.
5

6 **Section 3.5.481 Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 *Natural grade* means the elevation of the original or undisturbed natural surface of the ground.

17 *PALR* means Performance Assurance for Land Reclamation

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

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

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