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RESOLUTION

NUMBER 2010 - 036

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA, AMENDING RESOLUTION NUMBER 2007-096 PROVIDING FOR REVISED PERFORMANCE ASSURANCES FOR LAND RECLAMATION; PROVIDING FORMULAS FOR CALCULATING THE PERFORMANCE ASSURANCE FOR LAND RECLAMATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article XXIII of the Charlotte County Code of Laws and Ordinances ("Article XXIII"), provides that the Board of County Commissioners of Charlotte County ("Board") shall, by resolution, set performance assurances and fees for excavation and earthmoving permits; and

WHEREAS, Resolution Number 07-096 sets forth said fee schedule; and

WHEREAS, it is necessary to update fees from time to time to provide for the anticipated costs of reclamation; and

WHEREAS, the fees established herein are reasonably related to the actual costs of reclamation consistent with the provisions of Article XXIII; and

WHEREAS, the performance assurances established herein reasonably protect the public health, safety, and welfare, relative to obligations of excavation and earthmoving permittees for compliance; and

WHEREAS, Resolution 07-096 requires a financial assurance in the amount of 3,000 dollars per acre of littoral zone which is inadequate for reclamation of an excavation, which may require removal of equipment and buildings, grading, removal of stockpiles of dirt and other items associated with upland reclamation not just littoral zone plantings; and

WHEREAS, the Board desires the amounts of any financial assurances to more closely match real-time costs associated with reclaiming an excavation site; and

WHEREAS, the Board also desires that these costs will be re-evaluated yearly to match the condition of the excavation; and

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Charlotte County, Florida:

CHARLOTTE COUNTY CLERK OF CIRCUIT COURT
OR BOOK 3481, PGS 1194-1196 3 pg(s)
INSTR # 1937609
Doc Type GOV, Recorded 05/20/2010 at 01:20 PM
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1. The Growth Management Department of Charlotte County is hereby authorized and directed to collect those fees and require posting of those performance assurances at the time of permit application and annual review, as set forth hereinafter.

2. Resolution 07-096 is hereby amended by deleting in its entirety the section titled "Performance assurance for land reclamation" and replacing it with the following:

Performance assurance for land reclamation. A secured cash deposit or other financial instrument in a form acceptable to the County Attorney shall be provided in the amount sufficient to ensure compliance with the proposed reclamation plan pursuant to Article XXIII. At a minimum the amount to be provided shall cover the costs of all revegetation and landscaping, the restoration of any wildlife habitat, slope stability and erosion and drainage control, the disposal of any hazardous materials, and such other measures contained in the reclamation plan.

The calculation of the performance assurance shall be based on cost estimates prepared by a registered professional engineer and/or other qualified professionals retained by the applicant. The calculations shall take into consideration not only the costs of the physical activities but also the administrative, mobilization and acquisition costs necessary to assure the complete implementation of the reclamation plan in the event the applicant fails to fully reclaim. Furthermore, in projecting the amount of the performance assurance, it shall be assumed without prejudice or insinuation that the excavation could be abandoned by the permittee and, consequently, the County may need to complete the reclamation or contract with a third party commercial entity.


The initial performance assurance must be acceptable to the Hearing Examiner or the Excavation Administrator in those instances when no hearing is necessary. The amount of the performance assurance shall be reviewed annually consistent with the annual reporting and as-built certification requirements of Article XXIII. During the annual review process the amount of the performance assurance may be adjusted by the Excavation Administrator as necessary to account for partial reclamations for the preceding year, inflation or other cost altering factors. The annual review shall include estimates to cover reclamation for existing conditions and for anticipated activities during the upcoming year.

Nothing herein shall prevent the applicant from providing performance assurances pursuant to accepted phased excavation and reclamation plan in which the calculations and assurance amounts are based on specific phases of an operation. In doing so the applicant must submit reclamation calculations in a manner that clearly sets out the costs for each specific phase. Performance assurances under a phased plan shall be required only for those phases under active operation instead of the entire site. Under a phased plan the amount of the performance assurance will be recalculated at the end of each phase and adjusted accordingly.

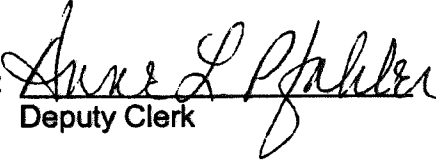
6. This resolution shall take effect upon approval by the Board of County Commissioners of Charlotte County, Florida.

PASSED AND DULY ADOPTED this 18 day of May, 2010.


BOARD OF COUNTY COMMISSIONERS OF
CHARLOTTE COUNTY, FLORIDA

By: 
Robert J. Starr, Chairman

ATTEST:
Barbara T. Scott, Clerk of Circuit
Court and Ex-officio Clerk to the
Board of County Commissioners

By: 
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: 
Janette S. Knowlton, County Attorney