

ORDINANCE NO. 2008-040

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, RELATING TO BORROW PITS AND OTHER EXCAVATIONS, STOCKPILES, AND FILLS THROUGHOUT SARASOTA COUNTY; AMENDING SARASOTA COUNTY ORDINANCE NO. 2007-024, AS AMENDED; AMENDING SECTION 54-345 RELATING TO REQUIREMENTS FOR OBTAINING PERMITS, SUBMITTAL OF ANNUAL REPORTS, AND OTHER REQUIREMENTS ASSOCIATED WITH ADMINISTRATION OF APPLICATIONS AND PERMITS; AMENDING SECTION 54-346 RELATING TO REQUIREMENTS FOR NATURAL RESOURCE PROTECTION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BOARD RECORDS
 FILED FOR RECORD
 2008 APR 24 AM 8:55
 KAREN E. RUSHING
 CLERK OF COUNTY COMMISSIONERS

MRPZ

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA:

Section 1: This Ordinance amends Sarasota County Ordinance No. 2007-024 as is codified in Chapter 54, Article XII, Sections 54-345 through 54-346 of the Sarasota County Code. In this ordinance, deleted text is shown in ~~strike through~~ and new text is underlined.

Section 2: The Board of County Commissioners, sitting as the Land Development Regulation Commission, has reviewed the ordinance codified in this Article and found it to be consistent with the Sarasota County Comprehensive Plan.

Section 3: Sections 54-345 through 54-346, Chapter 54, Article XII are hereby amended to read as follows:

Sec. 54-345. Requirements for obtaining permits, submittal of annual reports, and other requirements associated with administration of applications and permits.

(1) *Applications.* An Applicant for an Earthmoving permit shall submit an Earthmoving application and all of the necessary information, as determined by the Administrator, prior to an Earthmoving Permit being issued. The information required to be submitted in the application is shown in Appendix I. The appropriate type of Permit is based on cumulative volumes over the life of the project as follows:

Permit Type	Volume (yd ³) Type A Fill	Volume (yd ³) Type B-C Fill
General	100-2,500	N/A
Minor	2,500-100,000	1 to 50,000
Major	>100,000	> 50,000

- (2) *Conceptual Permits.* A person may, as an option, apply for a Conceptual Permit for excavations involving more than 100,000 cubic yards of Type A Fill, or more than 50,000 cubic yards of Type B or C Fill.
- (3) *Annual Reports.* Annual reports for existing Level III and Major Earthmoving Permits shall be submitted to the office of the Administrator with the information shown in Appendix II.
- (4) *Public Hearings.* Whenever a public hearing is required the following shall apply:
- (a) **Mailed Notice:** A minimum of 15 days prior to the public hearing date, the Applicant shall be responsible for copying and mailing a notice provided by Sarasota County to all appropriate property owners. Notification shall include the owner of the subject property if not the same as the Permittee.
- (1) Where an Earthmoving approval is being sought, notice shall be given to the following property owners:
- (a) Neighboring Property owners within 500 feet of the parcel, as described by a parcel identification number;
- (b) Property owners within one-half mile of the Earthmoving activity;
- (c) Property owners abutting the Haul Route (outside any public right-of-way) used to gain access to a collector or higher classification road;
- (d) Property owners located within 500 feet of a private road used for hauling to gain access to a public road;
- (e) Property owners neighboring the quadrants of any intersection of a Haul Route or private road accessing onto a roadway under Federal, State, or another unincorporated or incorporated jurisdiction; and
- (f) If the Earthmoving site is located on a collector or higher classification road under the County's jurisdiction, then all property owners neighboring the Haul Route for a distance of not less than one-half mile in both directions from the site along the collector or higher classification road.
- (2) A list and corresponding graphical location of all property owners to be notified within the above-required notification zone shall be

provided by the Applicant at the time of application. The required property owner list and graphic shall be based on the most recent data available at the County Property Appraiser's office. Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, and postage paid. An affidavit attesting to such mailing shall be submitted to the Administrator a minimum of 5 days prior to the public hearing date. Failure to document appropriate notification will result in cancellation of the public hearing.

- (3) If any dwelling unit within the required notification area is within a property owners' association, the property owners' association also shall be notified. Where the notification boundaries include a multi-family dwelling (e.g., condominium), each individual unit owner shall be notified.
 - (4) No later than 30 days prior to the public hearing date, the County may extend the notification area to one-half mile from the perimeter of the site.
 - (5) Where the notification area extends into abutting incorporated or unincorporated jurisdictions, notification shall also be provided to the abutting governmental body. A list and corresponding graphical location of all property owners to be notified within the above-required notification zone shall be provided by the applicant at the time of application.
- (b) **Posted Notice:** A minimum of 15 calendar days prior to the public hearing date, the Applicant shall be responsible for posting the individual property where a Permit, amendment, variance, or annual report review is sought with waterproof notices provided by Sarasota County. These notices shall be placed along all streets that the property(ies) front(s). Where the street is privately-owned, the Applicant may also be responsible for posting a notice at a nearby public location, as determined by Sarasota County. Where the land does not front a street, signs shall be erected on the nearest street with an attached notation indicating the general direction and distance to the land for which a Permit, amendment, variance, or annual report review is sought. Notices posted along a street shall be set back no further than 25 feet from the street and shall be visible for all to see from the road. All posted notices shall be removed no later than 10 days following the public hearing. The Applicant shall be responsible for ensuring that the appropriate posted notice is maintained on the lands for which a Permit, amendment, variance, or annual report review is sought until the completion of the public hearing. An affidavit attesting to the required posting and locations shall be submitted to the Administrator prior to the public hearing.

- (c) **Published Notice:** A minimum of 10 days prior to the public hearing date, a notice provided to the Applicant by the County shall be published by the Applicant in a newspaper of general circulation that has been selected by the County. The notice shall state the development proposed to be made, and a general description of the area involved, and shall include a drawing showing the development to be made and the location of same as it relates to the surrounding areas. No Permit, amendment, petition, or variance that requires a public hearing shall be considered by the Board until such time as notice of a public hearing on the Permit, amendment, petition, or variance has been given by publication of a notice of the hearing in a newspaper of general circulation in the County.

The Applicant shall be responsible for the cost of all notice requirements. Notwithstanding any other provision herein contained, failure to provide written or posted notice to adjacent property owners shall not constitute a jurisdictional defect provided that proper legal notice has been published.

(5) *Permit Approval Criteria.*

- (a) The Administrator shall issue General, Minor or After-the-Fact General and Minor Permits if the Applicant meets all applicable requirements set forth in this Article.
- (b) After approval by the Board, the Administrator shall issue Major Earthmoving Permits (or Conceptual Permits, if applicable). The approval may be granted, following a duly advertised public hearing and written notice to all property owners described in subsection (c)(1) of this section, at least ten days prior to the hearing date, provided that the Applicant has met all applicable requirements set forth by this Article.
- (c) Permits shall be issued if the Board or Administrator determines that:
 - (1) The proposed activity will not interfere with the proper functioning of any sanitary, stormwater or other drainage system or natural flowage way, whether public or private, so as to create flooding or health hazards.
 - (2) The proposed activity shall not result in a net loss upon the County-designated 100-year floodplain.
 - (3) The proposed activity for any stormwater conveyance on or from the site complies with the stormwater requirements contained within the County's Land Development regulations.
 - (4) The proposed activity does not adversely affect the implementation of any regional stormwater basin plan approved by the Board;

- (5) The proposed activity shall not adversely affect surface and groundwater levels;
- (6) The proposed activity will not generate dust, excessive noise, vibration, or traffic at levels that create, in the sole determination of the County, nuisances to adjacent property owners;
- (7) The application is consistent with the Comprehensive Plan and the Applicant has met all applicable requirements set forth by this Article. In addition, the proposed activities shall be consistent with the following:
 - (a) Chapter 54, Articles V, VI and VII of the Sarasota County Code relating to air quality, noise, and water quality protection;
 - (b) Chapter 54, Article XX of the Sarasota County Code, relating to coastal dredge and fill;
 - (c) Appendix A of the Sarasota County Code, relating to zoning;
 - (d) Chapter 66, Article III of the Sarasota County Code, relating to historic resources and the Historic Preservation Chapter of the Comprehensive Plan; and
 - (e) Chapter 74, the County's Land Development relating to stormwater.
 - (f) Chapter 54, Article XXXIII of the Sarasota County Code relating to the Myakka River Protection Zone.
- (8) The proposed activity will not adversely affect the public's health, safety and welfare.

(6) *Permit Duration.*

- (a) All General Earthmoving Permits issued under the terms of this Article shall be valid for a period not to exceed one year from the date of issuance. All Minor Earthmoving Permits issued under the terms of this Article shall be valid for a period not to exceed two years from the date of issuance. A new Permit must be issued prior to the commencement of operations beyond the expiration date of the Permit, unless a temporary extension is granted by the Administrator. Any request for a temporary extension shall be submitted to the Administrator at least 30 days in advance of the Permit expiration date. Extensions for General Permits

shall not be for longer than one year and extensions for Minor Permits shall not be longer than two years. No extensions shall be granted unless the County determines that adequate justification exists. The Permit shall not be issued until all information and fees are submitted and the application has been reviewed and approved in accordance with the provisions contained in this Article.

(b) All Major Earthmoving Permits and Conceptual Permits shall be subject to the following time limitations:

(1) Permits issued under the terms of this Article shall be valid for a period not to exceed ten years from the date of issuance, unless otherwise approved by the Board.

(2) The Board may grant an extension provided that it is consistent with the other provisions of the Permit and this Article. All requests for extensions shall be submitted to the Administrator at least 45 days in advance of the Permit expiration date. The Administrator has the authority to allow the Earthmoving activity to continue uninterrupted if a delay in processing an extension request is caused by the County. Final action by the Board shall supersede any extension granted by the Administrator.

(3) A minimum of 60 days prior to the anniversary date of Permit issuance, the Permittee shall submit to the County an annual report describing all activities conducted during the previous year and those proposed during the upcoming year, including any cleanup and closure activities. The report shall include sufficient detail to demonstrate that the Permittee has complied with all applicable ordinance regulations and permit conditions, written commitments provided by the Permittee, and County-approved plans. An annual report review fee, established by resolution by the Board, shall be submitted with each annual report. The Administrator shall determine whether all applicable conditions have been met. If all applicable conditions have been met, the Administrator shall accept the annual report, unless a written petition is filed and acted upon as described in this Article 30 days prior to the anniversary date of the Permit.

(7) *Public Complaint Procedures.*

(a) Any person who wishes to file a formal complaint regarding activities by a Permittee at any time shall provide a petition to the Administrator containing the following information:

(1) The name, address, and telephone number of the petitioner;

- (2) A statement of how the petitioner's substantial interests are affected by the Permittee's facility and/or operation; and
 - (3) A statement of the relief/remedy sought by the petitioner.
- (b) The Administrator shall attempt to resolve any complaints informally with Permittee and the petitioner.
 - (c) If the petitioner is not satisfied with any reasonable resolution efforts on the part of the Administrator or the Permittee, and the petition is not voluntarily withdrawn by the petitioner, the matter will be forwarded to the Board for discussion, at which time the Board will then determine whether a public hearing shall be held.
 - (d) If the Board decides not to hold a public hearing, the annual report shall be accepted, and no further action will be taken against the Permittee. If the Board decides to hold a public hearing, notice shall occur in accordance with this section. At such a hearing, the Board may impose such additional requirements on the permit as are necessary to alleviate any conflict between Permittee and the petitioner.
- (8) *Adjustments by Administrator Regarding Annual Report.*
- (a) The Administrator may approve adjustments in phased Excavation limits presented in a previously accepted annual report during a given permitted year should the Permittee experience changes in market demands, environmental constraints, or a delay in the processing of an annual report caused by the County. The Permittee shall make such requests in writing to the Administrator. The request shall not exceed 25 percent of the volume or acreage projected for excavation given in the previous annual report.
 - (b) The Administrator may allow a delay in the submittal of an annual report in accordance with this section if the Permittee provides written evidence that the earthmoving operation has been inactive for the entire past Permit year.
- (9) *Code Enforcement.* At any time, the Administrator or the Board may initiate proper and timely code enforcement action for any compliance issue in accordance with this Article, regardless of the timing of annual report submittal.
- (10) *Closure.* The Permittee shall indicate in an annual report submitted at least 11 months before the permit expiration date whether the Earthmoving operation will be closed prior to expiration of the permit or a new Earthmoving Permit will be requested to allow continuation of the Earthmoving operation. If the Permittee

opts to apply for a new Permit, a new Earthmoving Permit application shall be submitted to the Administrator at least 90 days prior to the expiration date of the existing Earthmoving Permit. The Administrator has the authority to allow the Earthmoving activity to continue uninterrupted if a delay in processing a new Permit application is caused by the County. If the Permittee instead chooses the former option, a Closure Plan meeting the requirements of this section shall be submitted with the appropriate annual report. The Closure Plan shall be subject to review and approval by the Administrator and may be reviewed and processed concurrently with an annual report. A Permittee may appeal any determination of the Administrator to the Board of County Commissioners. This requirement applies to all Permits issued after April 4, 1990.

All Permittees shall execute a closure procedure in accordance with a County-approved Closure Plan as specified under this section. The Closure Plan shall demonstrate compliance with the requirements of this Article. A schedule shall be included with each proposed Closure Plan that addresses completion of all closure activities and any monitoring required beyond the Permit expiration date in accordance with this Article. Other than required monitoring and maintenance activities, no closure activities shall extend more than two years beyond Permit expiration.

- (11) *Conditions and Stipulations.* The Board or the Administrator may impose such conditions, stipulations, and safeguards upon any Permit issued pursuant to this Article which are reasonable and which will serve to ensure that the standards of this Article will be complied with. Such conditions, stipulations and safeguards may include, but are not limited to, those necessary to protect adjacent or nearby landowners from any deleterious effects of the permitted activity, those necessary to prevent or mitigate adverse environmental impacts, and those necessary to prevent or mitigate adverse transportation impacts. An Applicant may appeal the imposition of any condition, stipulation, or safeguard imposed by the Administrator to the Board, which may approve, strike, or modify any condition, stipulation, or safeguard.
- (a) All Earthmoving performed under a permit issued pursuant to this Article shall be in accordance with the requirements set forth in this Article and shall conform with all plans, specifications, Permit stipulations, and other documents submitted by the Applicant.
 - (b) All Permits issued pursuant to this Article shall be subject to the requirements of all applicable Federal, State and local laws and ordinances.
 - (c) All Permits and the associated written conditions and stipulations shall be posted on-site prior to any Earthmoving activities commencing.

- (12) *Fees.* The Board of County Commissioners is authorized to set reasonable fees

and charges for the implementation of this Article. Such fees shall be set by resolution. Fees charged will substantially finance the expenditures of reviewing projects pursuant to this Article. Such fees may include but are not limited to:

- (a) Permit and exemption determination application review fees
- (b) Application re-review fees
- (c) Inspection fees
- (d) Public hearing advertisement fees
- (e) Code compliance fees
- (f) Annual report fees
- (g) Variance fees

Applicants for after-the-fact authorization shall be assessed a fee of three times the current fee, in addition to any fines and penalties assessed, providing the property owner(s) that committed the violation still owns the property. In instances where new property owners inherited unauthorized Earthmoving and where no corrective actions are required or additional Earthmoving is proposed, the current fee shall apply. In instances where new property owners inherited unauthorized Earthmoving and where corrective actions are required or additional Earthmoving is proposed, a fee of two times the current fee shall apply.

- (13) *Variances.* The Board, upon staff investigation and recommendation, may grant variances from the provisions of this Article which will not be contrary to the public interest where, owing to special conditions, it finds a literal enforcement of such provisions would result in unnecessary hardship on the land. The Board may establish additional safeguards and stipulations as the individual situation requires. A public hearing is required for all variances, as provided in this Article.

- (14) *Amendments.*

- (a) *Amendments to existing Level III and Major Earthmoving Permits.* The Board retains the authority to amend previously issued and active Level III, Conceptual, and future Major Earthmoving Permits, including Master Plans, conditions, or stipulations, at the request of the Permittee, and subject to the limitations identified in this section, if the proposed changes do not exceed the total area and volume as shown on the approved Master Plan. The Board may amend the Permit without requiring compliance with any standards incorporated into this Article after the date the permit was issued. Master Plan changes involving multiple Earthmoving Permits held by one Permittee on contiguous lands utilizing a common Haul Route may also be reviewed as a single Permit amendment if the proposed changes do not exceed the total area and volume shown on the approved Master Plans. The Board may incorporate into any such multiple Permit amendment the most restrictive conditions or stipulations of the affected Earthmoving Permits. In addition, any change in property ownership or Permittee for an Earthmoving operation requires a Permit amendment or a new Permit

application and consent from the property owner in accordance with this Article. The Board may grant such an amendment(s) after holding a public hearing following public notice in accordance with this Article. All proposed changes, including expansion or reduction of Excavation or fill limits, shall be shown on a revised Master Plan. All amendments shall be consistent with the current standards of all other applicable ordinances.

- (b) *Amendments to other permits.* The Administrator retains the authority to amend all other previously issued and active Permits, including site plans, conditions, or stipulations, at the request of the Permittee, if the proposed changes do not exceed the maximum volume allowed for the existing Permit type. Permit amendment requests shall be provided to the Administrator prior to the amended work being initiated, and at least 45 days prior to the date of Permit expiration.
- (15) *Administration.* The Administrator or his designee is vested with the authority to administer and enforce the provisions of this Article and is authorized and directed to take any legal action to ensure compliance with, or prevent violation of, the provisions of this Article, including issuing administrative stop orders and establishing provisions for inspections. The Board may permanently or temporarily revoke a Permit, in whole or in part, at any time after notice and hearing if it determines that the permitted operation has become a danger to public health or safety or if the operation is in violation of any County ordinance or the conditions of the Permit.
- (16) *Review period.* A determination by County reviewing agencies that the Permit or exemption application is complete or incomplete will be provided to the Administrator within approximately 15 working days following receipt of the application. County reviewing agencies include Resource Protection, Zoning, History Center, Land Development (or a duly authorized representative of those divisions), and any other agency as requested by the Administrator. If additional information is required by any reviewing agency, the Applicant shall provide it within 30 working days, or within 15 working days for an annual report review or a new Major Earthmoving Permit application to replace an expiring Permit or an After-the-Fact Earthmoving Permit application. Reapplication will be required if these deadlines are not met, unless waived by the Administrator. All revised plans must include a cover letter describing changes made to the original plan. Upon receipt of additional information, the reviewing agencies shall submit revised comments regarding second completeness review within approximately 15 working days. Once deemed complete by all reviewing agencies, applications will undergo a formal review. A formal review may be performed concurrent with the 15-day completeness review. Final review will be made to the Administrator within approximately 15 working days after commencement of a formal review. In addition, the reviewing agencies will notify the Applicant of any other County Permit(s) required for the proposed project. Permit decisions made by the Administrator may be appealed by the Applicant to the Board within 20 days of

such decision. After a review of the record, the Board will conduct a public hearing consistent with the requirements of this Article, and which time it may affirm, reverse, or modify the decision of the Administrator. When an application is subject to the overlapping administration provisions of this Article, these timeframes may be extended to accommodate the required reviews.

Sec. 54-346. Requirements for natural resource protection.

All approvals granted pursuant to this Article shall be consistent with the Principles for Evaluating Development Proposals in Native Habitats contained in Chapter 2, The Environment, of the Comprehensive Plan.

(1) *Wetlands and buffer impacts.*

- (a) Wetlands and their abutting buffers shall be preserved and not altered, except as otherwise authorized herein, or by other regulations of Sarasota County.
- (b) A minimum 30 feet wide buffer of upland vegetation shall be provided around preserved Wetland areas. In constrained situations, an average 30 feet wide buffer may be allowed. In instances where mesic hammock habitat located adjacent to a Wetland extends beyond 30 feet from the Wetland, the buffer shall be increased to encompass the hammock up to a maximum width of 50 feet.
- (c) Impacts to Wetlands shall be avoided to the maximum extent practical. In cases where impacts are unavoidable, impacts shall be minimized to the maximum extent practical. In cases where the Administrator determines that a Wetland is no longer capable of performing desired environmental functions or providing environmental values (as defined in Sarasota County's Comprehensive Plan), or in cases where it is determined by the Administrator that no reasonable alternative exists other than disrupting a Wetland or upland buffer, certain Alterations may be allowed.
- (d) All Alterations in Wetlands must be mitigated in accordance with the requirements and performance standards specified in the Environmental Technical Manual of the County's Land Development Regulations and in the "Principles for Evaluating Development Proposals in Native Habitats" found in the Environment Chapter of the Comprehensive Plan. Mitigation shall be as follows:
 - (1) In situations where the most current state-approved methodology does not apply, mitigation shall be created at a ratio of one-to-one for herbaceous Wetlands and two-to-one for wooded Wetlands in accordance with Level I performance standards; or
 - (2) In situations where the most current state-approved methodology

applies, mitigation shall be as required by the state methodology.

- (e) In cases where mitigation is required, mitigation and monitoring plans, as well as appropriate bonding, must be submitted to and approved by the Administrator before a Permit will be issued.
 - (f) Flow of water within, to, and through preserved Wetlands shall not be impeded and shall be such as to optimize wetland hydroperiods.
 - (g) Appropriate sediment control devices (hay bales, silt screens, or other devices approved by the Administrator) shall be employed to prevent sedimentation within the Wetland. Any building site adjacent to a Wetland and elevated by Filling must employ the same erosion control devices. Fill must be stabilized to the satisfaction of the Administrator.
- (2) *The Myakka River Area and Myakka River Protection Zone. All Earthmoving activities within the Myakka River Area or Protection Zone shall be consistent with the goals and objectives of the Myakka River Protection Ordinance No. 98-025, as amended. All activities conducted within the Myakka River Protection Zone shall be consistent with Chapter 54, Article XXXIII (the Myakka River Protection Code), Ordinance No. 2008-002.*
- ~~(a) Earthmoving shall be prohibited within the Myakka River Protection Zone for all purposes except Earthmoving meeting exemption criteria pursuant to any of Sections 54-349(3)(a-g)(i-l)(n-s) and Filling around the perimeter of a structure of a maximum 30 feet width to establish the entirety or a portion of a fire protection clear zone as defined in the County's Land Development Regulations. The Administrator may request information from the Applicant, including evidence of prior approval by the appropriate agency(ies), for any of the above referenced exemption sections to confirm that the Earthmoving meets the exemption criteria.~~
 - ~~(b) All Earthmoving allowed under Section 54-346(2)(a), within the Myakka River Protection Zone, shall be consistent with the Vegetative Removal Standard contained within the County's Land Development Regulations.~~
 - ~~(c) Earthmoving authorized under a valid Earthmoving Permit, agricultural exemption, written non-agricultural exemption, issued by the County prior to the effective date of these Code revisions, or the continuation of uninterrupted agricultural Earthmoving operations and maintenance in existence prior to October 13, 1981, may continue to completion of the Earthmoving project, until expiration of the authorization, or until cessation of the agricultural operation, provided no expansion or intensification of such authorized Earthmoving occurs.~~
 - ~~(d) Upland buffers of native vegetation, of a minimum 30 feet width, shall be~~

~~provided around preserved Wetland areas where the Wetland is not contiguous to the River Area. Where such Wetland is contiguous to the River Area, upland buffers shall be provided in conformance with Section F of the Environmental Technical Manual of the County's Land Development Regulations. Where the upland vegetation surrounding any Wetland contains mesic hammock habitat, the minimum buffer width shall be 50 feet.~~

Section 4. Severability.

In the event that any portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Article.

Section 5. Effective Date:

This Ordinance shall take effect immediately upon receipt by the Office of the Secretary of the State of Florida.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, this 22ND day of April 2008.

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

BY: 

Chair

ATTEST:
KAREN E. RUSHING, Clerk of
Circuit Court and Ex-Officio Clerk
of the Board of County Commissioners
of Sarasota County, Florida

BY: 

Deputy Clerk