

A
1999
ived
nitting
Division

ORDINANCE NO. 98-025

AN ORDINANCE OF THE COUNTY OF SARASOTA RELATING TO PROTECTION MEASURES FOR THE MYAKKA RIVER AND IMPLEMENTATION OF THE SARASOTA COUNTY COMPREHENSIVE PLAN; PROVIDING FINDINGS; PROVIDING FOR THE ADOPTION OF THE MYAKKA RIVER PROTECTION PLAN; PROVIDING DIRECTION TO PROCESS AMENDMENTS TO COUNTY ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

DEPARTMENT OF
TALLAHASSEE
HONORARY

98 DEC 17 PM 4:06

FILED

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

Section 1. Findings. The Board of County Commissioners of Sarasota County, hereinafter referred to as the Board, makes the following findings:

1. The Legislature of the State of Florida enacted the Myakka River Wild and Scenic Designation and Preservation Act (the "Act") which is presently contained in Part III, Chapter 258, Florida Statutes (1997).
2. Pursuant to the Act, the corridor of land surrounding and beneath the Myakka River between River Mile 7.5 and River Mile 41.5 has been designated as a Florida Wild and Scenic River (the "Myakka River"), and more particularly described as that portion of the Myakka River located between State Road 780 in Sarasota County and the Sarasota-Charlotte County line. Further, the "Wild and Scenic Protection Zone" means the area which extends 220 feet landward from the river area.
3. The Act provides for the permanent preservation of the Myakka River by way of development of a plan for permanent administration by agencies of state and local government.
4. The Act requires the State of Florida, Department of Environmental Protection (the "Department") and a Coordinating Council created by the Department, to jointly develop a management plan for the Myakka River.
5. In May 1990, the "Myakka Wild and Scenic River Management Plan" was approved by the Governor and Cabinet in accordance with the Act.
6. In 1991, Chapter 150 Florida Administrative Code entitled "Myakka River Wild and Scenic River Rule" was established for the purposes of implementing the Myakka Wild and Scenic River Management Plan.

12-11-98 41 050 25

12-11-98 41 050 25

7. The Act requires that the Department of Environmental Protection and the Department of Community Affairs enter into an agreement with Sarasota County that includes guidelines and performance standards for regulating proposed activities in the Myakka River Wild and Scenic Protection Zone.
8. On December 16, 1997, the Board adopted a State-Local Agreement (the "Agreement") establishing interagency coordination for administering rules and regulations pertaining to the Myakka River Wild and Scenic Protection Zone in accordance with the Act. The Act requires that within one (1) year after the Agreement is adopted, necessary ordinances, land development regulations and Comprehensive Plan Goals, Policies and Objectives shall be adopted and/or amended by Sarasota County in conformance with the Agreement.
9. On July 17, 1993, Sarasota County Comprehensive Plan Amendment RU-14 was challenged in the case styled, Maynard Hiss v. Department of Community Affairs, Sarasota County, et al. Case No. 93-4217GM.
10. On March 15, 1994, the Board approved a Settlement Agreement in the Hiss case which required the Board to establish an advisory board, to adopt a Myakka River Protection Ordinance containing a plan and continue its efforts in carrying out the terms of the State-Local Agreement.
11. Resolution No. 94-236, adopted by the Board on September 20, 1994, established the "Myakka River Planning Advisory Board".
12. On December 11, 1997, the Board approved, with modifications, the recommendations of the Myakka River Protection Plan (the "Plan"), in accordance with the Settlement Agreement.
13. It is necessary to enact this Ordinance setting forth adoption of the Plan and assisting in the implementation of Apoxsee, the Sarasota County Comprehensive Plan.
14. As identified in the Plan, Apoxsee, the Sarasota County Comprehensive Plan, contains a number of Goals, Policies and Objectives for protecting the Myakka River consistent with the requirements of the Act; thus, Apoxsee shall not require any additional amendments thereto.
15. The Board, sitting as the Sarasota County Land Development Regulations Commission, has reviewed the proposed ordinance provided herein and has found that the ordinance is consistent with the Sarasota County Comprehensive Plan, as amended.

Section 2: Adoption of Myakka River Protection Plan. The Board of County Commissioners, after having conducted a public hearing on this matter and having made the findings specified above, hereby accepts delivery and adopts the Myakka River Protection Plan, attached as Exhibit A, in compliance with the Settlement Agreement and the State-Local Agreement.

Section 3: Direction to Process Amendments. The Board of County Commissioners hereby directs staff to process amendments, consistent with provisions of the Act, to minimize potential adverse physical and visual impacts on resource values in the river area and to minimize adverse impacts on private landowners use of land for residential purposes, as they apply to the following County ordinances:

- (a) County Ordinance No. 75-38, as amended, commonly referred to as the Zoning Ordinance.
- (b) County Ordinance No. 81-12, as amended, commonly referred to as the Land Development Regulations.
- (c) County Ordinance No. 81-60, as amended, commonly referred to as the Earthmoving Ordinance.
- (d) County Ordinance No. 83-44, as amended, commonly referred to as the Tree Protection Ordinance.

Section 5. Severability. If any provision of this ordinance is for any reason finally held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions.

Section 6. Effective Date. This ordinance shall take effect immediately upon filing with the Florida Department of State.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, this 34th day of December, A.D., 1998.

BOARD OF COUNTY COMMISSIONERS OF
SARASOTA COUNTY, FLORIDA

By: [Signature]
Chairman

ATTEST:

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

By: [Signature]

Deputy Clerk

THE MYAKKA RIVER PROTECTION PLAN

BOARD OF COUNTY COMMISSIONERS

Raymond A. Pilon--District 1
David R. Mills--District 2
Shannon Staub--District 3
Jack O'Neil--District 4
Robert L. Anderson--District 5

MYAKKA RIVER PLANNING ADVISORY BOARD

James Cooper
Dr. Mary L. Jelks
Charles E. Koch
Cord C. Mellor
Jono Miller
Jean H. Ost
Stephen M. Suau
Thomas H. Taylor, Jr. (Chairman)
John J. Whelan

098-015

SARASOTA COUNTY STAFF

Chief John H. Albritton, Fire Department
Kirk Bagley, Transportation Department
Brian Beatty, Planning Department
Stephen Brown, Planning Department
Gary S. Comp, Natural Resources Department
Stephen E. DeMarsh, Office of the County Attorney
Richard A. Drummond, Planning Department
Robert W. Forbes, Health Department
Robert "Terry" Gilbert, Land Development Coordination
Dr. John Goodknight, Transportation Department
Edward Goscicki, Utilities Department
Dana Gourley, A.I.C.P., Natural Resources Department
Jerry Gray, Planning Department
Dr. Robin L. Hart, Natural Resources Department
Nina Large, Natural Resources Department
Sheriff Geoffrey Monge
Captain Terry Lewis, Sheriff's Department
William Little, Health Department
J.P. Marchand, P.E., Transportation Department
Sandra R. Newell, P.E., Transportation Department
James Oppy, Utilities Department
William Perkins, Health Department
Paul Radauskas, Construction and Property Standards Department
Alan W. Roddy, Office of the County Attorney
Walter Rothenbach, Parks and Recreation Department
James Todora, County Property Appraiser
Meg A. Wittmer, Office of the County Attorney
Laird Wreford, Natural Resources Department

TABLE OF CONTENTS

BACKGROUND	A - 1
MYAKKA RIVER RESOURCE VALUES AND ATTRIBUTES	A - 1
GOALS DEVELOPED BY THE PLANNING ADVISORY BOARD	A - 3
OBJECTIVES	A - 12
REGULATIONS PERTAINING TO LAND USE AND ACTIVITIES ...	A - 12
PLANNING TOOLS, PROGRAMS AND STRATEGIES	A - 19
PUBLIC FACILITY PLANS	A - 26
APPENDIX	A - 30
DEFINITIONS	A - 36

meant

THE MYAKKA RIVER PROTECTION PLAN

BACKGROUND

Sarasota County Resolution No. 94-236 states that the primary function of the Myakka River Planning Advisory Board (MRPAB) is to provide recommendations to the Sarasota County Board of County Commissioners on how to protect the heritage and enhance the integrity and resources of the Myakka River. The recommendations are to address the development, administration, implementation and updating of a Myakka River Protection Ordinance. The Ordinance shall contain a plan that includes the following:

- (A) Identification of important natural and cultural resources and attributes;
- (B) Goals, objectives, and policies applicable to the planning area that incorporate relevant goals and objectives of the Myakka Wild and Scenic River Management Plan and Apoxsee (Sarasota County's Comprehensive Plan);
- (C) Regulations pertaining to land use and land activities;
- (D) Planning tools, programs and strategies to implement the goals and objectives referred to in (B) above; and
- (E) Public facility plans.

(A) MYAKKA RIVER RESOURCE VALUES AND ATTRIBUTES

The State of Florida's Myakka Wild and Scenic River Management Plan was accepted in May, 1990 by the Governor and Cabinet. Section 4 of the Management Plan describes resource values, issues, and problems as identified by the Myakka River Management Coordinating Council and work groups during the preparation of the Plan. The major resource values and attributes have been briefly summarized below. These values and attributes have been endorsed by the MRPAB.

Economic resource values focus on agricultural activity with other components including land development, transportation, and mining activity. Agricultural activity may involve crop production, citrus, and sod farming while livestock grazing takes place on improved and unimproved pasture/rangeland. The economic elements most closely related to the river itself are commercial fishing, sport fishing, and commercial boat touring.

Scenic resource values associated with the Myakka River include its vista as seen from the river and its bank. The visual components vary from narrow river reaches with associated hardwood forests to wide open lake panorama. A predominant River experience is the

overall wilderness corridor with its many changing characteristics and spontaneous observations.

Recreational resource values center upon resource-based recreational activities and opportunities and as such these features are concentrated for the most part along the river and its banks. The primary recreation activities which are water-dependent include fishing, boating, and canoeing. Water-related activities associated with the River are camping resorts, picnicing, hiking and bicycling.

Cultural and historic resource sites of the Myakka River watershed provide present and future residents and tourists with educational destinations. These destinations emphasize the unique character of communities through the preservation and restoration of historic structures. A number of historically significant structures occur within the boundaries of the Myakka River State Park, and the majority of the River corridor within the County has been identified as an archaeological sensitivity zone.

Geologic resource values occurring along the Myakka River corridor include two springs, Warm Mineral Springs and Little Salt Springs. A sinkhole called Deep Hole is located in the southwest corner of Lower Myakka Lake and bluffs dominate the banks along several segments of the River.

Water resource values include the following three components: water quality, the quantity of the freshwater discharge, and the time distribution of the discharge. The River is designated in the Florida Administrative Code as Class I waters and has an Outstanding Florida Water and Wild and Scenic River designation. The River's tributaries and sub-basins provide additional factors in water quality and quantity.

Terrestrial ecology resource values comprise all of the plants and animals associated with the uplands and wetlands of the Myakka River corridor. Included would be various flatwoods, prairies, scrub, hammock, wetlands and swamp. These resource values deal with the plants and animals at individual, species community, and ecosystem levels. There are a variety of listed species of both plants and animals that occur throughout the corridor.

Aquatic ecology resource values are embodied in the biotic communities and aquatic habitats of the River which include ecological, recreational, and commercial. Fisheries consider the freshwater sport fish caught in the lakes and upper reaches of the River while saltwater recreational and commercial fishing occurs further south of I-75 within the more estuarine segments of the corridor.

(B) GOALS DEVELOPED BY THE MRPAB:

The MRPAB established 4 general goals which are listed below. The corresponding objectives from the Myakka Wild and Scenic River Management Plan and the goals, objectives, and the objectives and policies from Sarasota County's Comprehensive Plan, Apoxsee, which support each of these 4 goals have also been identified.

GOAL 1 Protect and maintain native habitats (in particular wetlands and hammocks) and other plant communities along the River;

Myakka Wild and Scenic River Management Plan

Objective 1: To protect, enhance and maintain the unique and irreplaceable values, functions, diversity and benefits of the natural resources along the Myakka River;

Apoxsee

Environment Policy 1.3.5: "By 1999, the County shall adopt and implement an ordinance that contains siting, design and construction criteria for marinas, boat ramps, and other boat facilities to minimize impacts on estuarine waters and the endangered west indian manatee. The expansion of existing boating facilities in suitable areas shall occur over the construction of new facilities. New and expanded motorized boating facilities shall not be located in or adjacent to areas of significant manatee habitat and travelways as defined by said ordinance. No new motorized boating facilities shall be allowed, at a minimum, within the Pansy Bayou and the Warm Mineral Springs and Creek."

Environment Policy 5.2.3.: "Enact ordinances and/or amend existing ordinances that protect the Myakka River, and consider the results of ongoing study and management efforts by various organizations, agencies, and County Departments (for example, the Myakka River Management Coordinating Council, the Department of Environmental Protection sponsored Myakka River Basin Study, and the County's Myakka River Downstream Studies). In accordance with Section 258.501(6)(a), Florida Statutes, development which affects the designated "wild and scenic protection zone" of the Myakka River shall meet standards which conform to or are more stringent than standards developed pursuant to Section 258.501, Florida Statutes, the "Myakka River Wild and Scenic Designation and Preservation Act", including standards found in the Myakka Wild and Scenic Management Plan accepted by the Governor and Cabinet on May 22, 1990, and to be included in the State-Local Agreement for Managing the Myakka River Wild and Scenic Protection Zone."

Environment Objective 5.4: "To identify, manage, and protect all ecological communities and wildlife, especially critical habitats and endangered, threatened, and species of special concern identified in official federal, State, or international treaty lists."

Environment Policy 5.4.1: "Continue to review development proposals for consistency with the 'Principles for Evaluating Development Proposals in Native Habitats' as required by the Land Development Regulations (Ordinance No. 81-12, as amended)."

Environment Policy 5.4.2: "The County will continue to work with State and federal agencies regarding the development and implementation of protection guidelines relating to threatened and endangered species. By July 1, 2000, the County Natural Resources Department shall prepare a plan to adopt and allow the County to enforce guidelines adopted by State and federal agencies or specific authorizations granted by State and federal agencies that protect listed species occurring within the County. Unless precluded by State and federal law, the County may adopt more stringent requirements when deemed appropriate."

Environment Policy 5.4.3: "Require development order applicants to consult with the appropriate agencies and to use recognized sampling techniques to identify endangered, threatened, and species of special concern."

Environment Policy 5.4.6: "Development in areas of critical manatee habitat shall not adversely impact the manatee."

Environment Policy 5.5.2: "The Future Land Use Map Series shall be revised to show the location of areas of high ecological value as identified by staff and approved by the Board of County Commissioners."

Environment Policy 5.5.3: "Develop mechanisms to acquire, physically link natural areas into a contiguous system or otherwise protect environmentally significant lands through a voluntary program and coordinate County resources with existing State programs such as the Conservation and Recreation Land (CARL) Program, the Save Our Rivers (SOR) Program, and with groups such as the Nature Conservancy and the Trust for Public Lands. Priority should be given to acquiring and otherwise protecting properties which are adjacent to or in close proximity to existing preservation areas, with emphasis on maintaining opportunities for a regional greenways system that may include a mix of flow ways, areas subject to flooding, native habitats, recreational trails and wildlife corridors."

Environment Policy 5.5.4: "Sarasota County shall immediately establish additional incentives for landowners to protect the naturally beneficial features of the lands identified as having high ecological value pursuant to Policy 5.5.2, rather than emphasizing reliance upon regulatory police power authority. These additional incentives shall utilize a full range of techniques as appropriate (including, but not limited to, tax incentives, and provisions for variable lot sizes in Rural Areas)."

Environment Policy 5.5.10: "Protect the natural diversity, processes and functions of natural communities in the Myakka River State Park and Oscar Scherer State Park from development impacts by coordination with Florida Department of Environmental Protection and Southwest Florida Water Management District to maintain and enhance soils, groundwater, surface and subsurface waters, shorelines, vegetative communities and wildlife habitats within these management areas."

Environment Policy 5.5.11: "Native habitats set aside in preservation and conservation areas shall be managed in accordance with resource management plans which are subject to review and approval by the County through the development review process, to ensure maintenance of the functions and values of these native habitats."

Environment Policy 5.5.12: "Policy 2.1.2 of the Future Land Use Chapter shall include Map 21: 'Figure 2-10: Areas of High Ecological Value in Unincorporated Sarasota County' as part of the Future Land Use Map Series."

Environment Policy 5.5.13: "By 1998, additional criteria for off-site mitigation and mitigation alternatives will be developed for consideration by the Board of County Commissioners. These alternatives would be allowed to offset wetland impacts provided that there is not a net loss in total wetland acreage (i.e., all wetland acreage impacted shall be mitigated)."

Environment Policy 5.6.1: "The County shall promote the conservation of native vegetation removed during land-clearing and utilize this resource for transplanting and revegetation."

Environment Policy 5.6.5: "Where practical, invasive and nuisance plants will be removed from new developments and County-owned property and replaced with native or other appropriate ornamental species."

Environment Policy 5.6.6: "During the development review process, encourage the private sector to preserve natural vegetation, to relocate native vegetation that cannot be preserved and remove invasive and nuisance plants."

Environment Policy 5.6.7: "Pursue an interdepartmental/interagency approach to the development of management plans and/or guidelines for County-owned Public Conservation/Preservation Lands and the native areas within parks in order to protect, maintain, and restore, where necessary, native habitats. Previously approved management plans shall be considered in the implementation of this Policy."

Environment Policy 5.7.3: "Educational materials shall be made available to developers, homeowners, and other interested citizens concerning proper

maintenance, management, restoration, and development in natural areas (for example, pamphlets about habitat creation, endangered species, management of development ponds, shoreline and dune vegetation, xeriscape, water conservation, and the Street Tree Program)."

Environment Policy 5.7.4: "The County shall use Integrated Pest Management (I.P.M.) in all of its operations to set an example and encourage citizens to use these least toxic management methods to control pests."

Myakka River Principles V.B

2. Management Guidelines:

- * a. Prohibit dredging and filling in the Myakka River
- * b. Implement a "wild and scenic protection zone" for new construction, unless otherwise vested by a prior development order approval. By July 1, 1997, the Sarasota County Board of County Commissioners shall adopt an ordinance establishing the guidelines and performance standards to apply in managing the "wild and scenic protection zone". (RU-30, Ord. 97-061, July 8, 1997)
- * c. Strive to reduce pollution entering the Myakka River. All new construction adjacent to the River and within a semi-rural or urban designation shall connect to a County-approved central service for wastewater treatment. (RU-14, Ord. 93-033, May 11, 1993)
- * d. Closely monitor the effects of phosphate mining and other potentially detrimental land uses.
- * e. Establish a special conservation management area that includes the Myakka River and appropriate lands adjacent to the River to ensure the future conservation of the Myakka River and its watershed.

Freshwater Wetlands Principles VI.A (refer to Apoxsee)

Mesic Hammocks Principles VII.A (refer to Apoxsee)

Section 4(b) of the Tree Protection Ordinance No. 83-44, as amended: The County does not require any tree permit for the removal of Brazilian pepper, melaleuca, Australian pine, carrotwood; and china-berry.

Invasive Plant Species Ordinance No. 90-01, as amended: The County prohibits the importation, sale, propagation and planting of Brazilian pepper, melaleuca, Australian pine, carrotwood, Chinese tallow and beach naupaka.

GOAL 2 Protect the floodplain functions and values of the River;

Myakka Wild and Scenic River Management Plan

Objective 5: To minimize urban and suburban encroachment and resultant adverse impacts upon the river and allow appropriate land uses within the watershed;

Objective 6: To provide for the regulation, control, and distribution of public access to the Myakka River where necessary to protect and enhance the resource values of the river area;

Objective 7: To minimize the disturbances to natural resources of the Myakka River from river-related recreational uses;

Objective 8: To protect archaeological/historical sites from adverse impacts associated with development, vandalism, and artifact collecting; and

Objective 9: To expand the knowledge and data base of the archaeological/historical resources in the Myakka River vicinity and in the watershed.

Apoxsee **Environment Policy 2.1.2.: "Continue to prohibit dredge and fill activities in the Gulf of Mexico, bays, rivers, and streams of the County except to maintain existing drainage canals, existing or future County-approved navigation channels and beach renourishment projects, and silt or obstruction removal, when environmentally sound. The dredging of new navigation channels other than those just described shall be prohibited."**

Future Land Use Goal 1: "Preserve, protect and restore the integrity of the natural environment, historic and archeological resources, and preserve agricultural uses consistent with resource protection."

Future Land Use Objective 1.1: "To protect environmentally sensitive lands, conserve natural resources, protect floodplains, maintain water quality, and open space, and conserve and protect historic and archeological resources."

Future Land Use Policy 1.1.1.: "All development proposals must conform to the appropriate portions of the Environment Chapter's Primary Components and Guiding Principles before such proposals can be considered to be consistent with the Future Land Use Plan."

Future Land Use Policy 1.1.3.: "The designated County Coastal High Hazard Area shall include the evacuation zone for a Category 1 hurricane, as established in the regional hurricane evacuation study."

Future Land Use Policy 1.1.4.: "Residential development within the adopted Coastal High Hazard Area shall conform to the following:

In the event that a residential structure located within the adopted Coastal High Hazard Area is voluntarily destroyed, or destroyed by natural forces, the redevelopment of said property must conform to the underlying zoning;

The provisions of this Policy shall not be construed as restricting the rebuilding of a single family residence on an existing lot-of-record, provided that such property meets all requirements pertaining to construction in the Coastal High Hazard Area;

In the event that natural forces render a property located in the Coastal High Hazard Area unbuildable, or reduce the development potential of a property as allowed by the prior acreage and the underlying zone district, utilization of the Transfer of Development Rights concept will be encouraged. Development Rights, in such cases, shall be determined based upon pre-disaster conditions; ..."

Future Land Use Policy 1.1.6.: "No development order shall be issued which would permit development in 100-year floodplains, as designated on Federal Emergency Management Agency Flood Insurance Rate Maps or adopted County flood studies, or on floodplain associated soils, defined as Soils of Coastal Islands, Soils of the Hammocks, Soils of Depressions and Sloughs, and Soils of the Floodplains and shown in Figure 2-2, that would adversely effect the function of the floodplains or that would degrade the water quality of water bodies associated with said floodplains in violation of any local, State, or federal regulation, including water quality regulations."

Future Land Use Policy 1.1.7.: "Sarasota County will coordinate efforts to acquire public lands for conservation, preservation, and open space."

Future Land Use Policy 1.1.8.: "Provide for the adequate buffering of Public Conservation Lands from potentially incompatible adjacent land uses."

Future Land Use Policy 1.1.9.: "Any new Public Conservation and Preservation Area, preserved/acquired pursuant to Policy 5.5.2. and Policy 5.5.3. of the Environment Chapter, shall have all buffering and land use compatibility strategies incorporated to the extent feasible and finalized prior to the closing."

Future Land Use Policy 1.1.10.: "Normal management practices associated with maintaining and restoring native habitats such as controlled burning within public and private Conservation/Preservation areas shall be permitted."

Future Land Use Policy 1.1.11.: "All development and redevelopment shall be consistent with the Primary Components of the Historic Preservation Chapter."

Recreation and Open Space Policy 1.1.5.: "Recreational uses implemented on the Pinelands Reserve and the T. Mabry Carlton, Jr. Memorial Reserve shall be limited to activities which are ecologically benign, non-consumptive and resource-based."

Recreation and Open Space Objective 1.2: "To ensure that recreational lands and facilities are compatible with surrounding land uses and the natural environment in accordance with the Environment Chapter, through the year 2010."

Recreation and Open Space Policy 1.2.4.: "Encourage conservation and ecologically sensitive management of undeveloped lands for their environmental, recreational and open space value through acquisition and during development review processes."

Recreation and Open Space Policy 1.3.4.: "Develop greenway policy designed to establish strategies regarding the coordinated identification, protection, and management of linear open space connectors in cooperation with private land owners."

Environment Goal 4: "To lessen the impact of a destructive storm on human life, public facilities, private structures, and coastal natural resources in Sarasota County."

Environment Objective 4.3: "To limit additional public investment in order to restrict further concentrations of population in the Coastal High Hazard Area."

Environment Policy 4.3.1.: "The construction or reconstruction of County funded facilities or infrastructure in the Coastal High Hazard Areas shall be prohibited except for passive recreation facilities and those necessary to ensure public health and safety."

Environment Policy 4.3.2.: "Utilize the County's power of eminent domain and regulatory authority to relocate threatened and/or damaged structures and infrastructure landward of the Coastal High Hazard Area. Consistent with the availability of budgeted funds, purchase property for relocation."

Environment Policy 4.3.3.: "Special High Hazard taxing zones, as necessary, will be created to help pay for the relocation landward of the Coastal High Hazard Area, the reconstruction, and/or protection of storm damaged public infrastructure and facilities, and shelters, to ensure public health and safety."

GOAL 3 Maintain the water quality and water quantity of the River.

Myakka Wild and Scenic River Management Plan

Objective 2: To protect and/or enhance the surface and groundwater resource values of the Myakka River, including protection and enhancement of water quality and designated uses, and protection and restoration of optimal quantity and timing of freshwater discharge;

Objective 3: To preserve, protect and restore natural aquatic habitat necessary for the continued healthy existence of aquatic populations and communities within the Myakka River;

Apoxsee Public Facilities Goal 1: "Sanitary sewer service shall be provided to Sarasota County residents through the continual evolution of a centralized regional wastewater collection and treatment system, and shall be provided in a safe, clean, efficient, economical, and environmentally sound manner, concurrent with urban development."

Public Facilities Objective 1.1: "Continue to correct existing wastewater facility deficiencies, and coordinate the acquisition, extension, and construction of, or increase in the capacity of, facilities to meet future needs."

Public Facilities Policy 1.2.1: "The County shall consider adoption of an ordinance requiring mandatory connection to available public and private central wastewater systems. The requirements of such an ordinance may be more stringent than those contained in Chapter 381, Florida Statutes, as the same may be amended."

Public Facilities Policy 1.2.2: "The County shall continue to require new development to connect to central wastewater systems consistent with the requirements contained in Land Development Regulations based on the size of the development and distance to the existing system, the available capacity in the system, and the utility's rules allowing connection to the system."

Public Facilities Policy 1.5.2: "Issuance of development orders for any site proposing to utilize an on-site wastewater treatment and disposal system shall be contingent upon demonstration of compliance with applicable federal, State and local permit requirements. Soil surveys shall be required for on-site wastewater treatment and disposal system permits. No individual on-site systems shall be permitted where soil conditions indicate that the system would not function without degrading water quality or where land alterations necessary to accommodate the system would interfere with drainage and floodplain functions."

Environment Policy 5.2.6: "Require Best Management Practices, as provided in the County's Earthmoving Ordinance, for conversion of native habitat to agricultural land uses, consistent with State and federal recommended standards, to reduce pesticides, fertilizer and soil erosion."

GOAL 4 Minimize the visual intrusion of land use improvements within the River corridor.

Myakka Wild and Scenic River Management Plan

Objective 4: To coordinate with local, regional, state, and federal agencies in the use and regulation of land management practices that protect the quality of the Myakka River and its tributaries;

Apoxsec

Environment Policy 5.6.1: "The County shall promote the conservation of native vegetation removed during land-clearing and utilize this resource for transplanting and revegetation."

Environment Policy 5.6.5: "Where practical, invasive and nuisance plants will be removed from new developments and County-owned property and replaced with native or other appropriate ornamental species."

Environment Policy 5.6.6: "During the development review process, encourage the private sector to preserve natural vegetation, to relocate native vegetation that cannot be preserved and remove invasive and nuisance plants."

Section 4(b) of the Tree Protection Ordinance No. 83-44, as amended: The County does not require any tree permit for the removal of Brazilian pepper, melaleuca, Australian pine, carrotwood, and china-berry.

Invasive Plant Species Ordinance No. 90-01, as amended: The County prohibits the importation, sale, propagation and planting of Brazilian pepper, melaleuca, Australian pine, carrotwood, Chinese tallow and beach naupaka.

198-11

The following Objectives have been prepared by staff from the recommendations developed by the MRPAB. The Objectives have been grouped into the respective sections (C), (D), or (E) to provide consistency with the format of the Plan identified on page A - 1.

(C) REGULATIONS PERTAINING TO LAND USE AND LAND ACTIVITIES:

Objective A: To preserve and encourage the growth of native plants along the Myakka River.

Implementation Actions:

1. The County should encourage the removal of nuisance and invasive vegetation along the River.
2. The County should continue to require removal of nuisance and invasive plants from development sites.

Background: This objective is addressed under Apoxsee Environment policies 5.6.5 and 5.6.6. and associated ordinances.

On July 1, 1997, the Board adopted and reinstated the following language into the LDR:

"The authority granted by approval of the preliminary subdivision plans includes necessary clearing and grubbing for construction of access areas and installation of pollution control measures required during the construction phase only. No clearing or grubbing of the land in any way shall occur in conjunction with proposed land development prior to preliminary plan approval or prior to installation of protection devices pursuant to Sections B2.1.i and j, Development Improvements Technical Manual Section C.4.f. and Subdivision Technical Manual Sections A.1.c. and B.4.e.6. No trees shall be removed without first obtaining a tree removal permit pursuant to Ordinance No. 83-44. All nuisance and/or exotic plants shall be removed from site during clearing and grubbing operation."

Objective B: To protect wildlife and water quality within the Myakka River protection zone.
(See related Objective H on page A - 20)

Implementation Actions:

1. The County should prohibit storage of hazardous materials within the River Area and Protection Zone of the Myakka River. The language of the Myakka River Protection Ordinance should address the prohibition of new facilities for the bulk storage, handling or processing of hazardous substances, and

8-DX

underground and above ground petroleum product storage facilities and other regulated substances within the River Area and Protection Zone.

2. The County should process an amendment to the Zoning Ordinance to establish a prohibition of any new facilities for the bulk storage (see page A - 36 for the definition of bulk storage), handling or processing of regulated substances within the Myakka River Protection Zone.

Background: A precedent has been set by the County for imposing a prohibition on such facilities through the adoption of the Initial Wellhead Water Resources Protection Ordinance No. 92-079. The proposed regulation will exclude substances in original containers for retail purposes and those routinely used in residences and business establishments. Existing businesses along the River having underground tanks used for fuel distribution are already regulated under State and local requirements. Gasoline used for lawn mowers and boats, insecticidal soap, detergents, and boric acid roach traps would not be regulated under this proposed Ordinance. The information exchange and education efforts under Objective M (page A - 25) could recommend proper storage of these items elevated above the flood level. Changes to the Zoning Ordinance should take into account, and be consistent with, existing regulations governing the handling and processing of regulated substances as they relate to existing regulated uses.

Objective C: To promote measures for new structures such that the scenic natural vistas and natural sound environment of the Myakka River are protected.

Implementation Actions:

1. The County should process an amendment to the Zoning Ordinance to address setback requirements and new supplementary regulations for accessory structures as follows:
 - a. New single-family residential development (including accessory structures) occurring on large acreage lots (minimum lot size of 5 acres), should be located no closer than one hundred and fifty feet from the landward boundary of the River Area. The County Staff shall examine for consideration by the Board the effectiveness of less burdensome setback alternatives, such as measuring the proposed 150-foot setback from the bank of the river. A variance process from these setback requirements would be established to address any hardship cases. Structures that have an underlying support which raises the residential living unit above the 100 year floodplain that have been involuntary destroyed shall be allowed to rebuild on the same footprint. Additionally, the amendment will provide that those

existing lots-of-record that do not meet this new standard shall not be prohibited from development so long as such development occurs consistent with Section 5.2 of the Zoning Ordinance;

- b. New cluster residential development and non-residential development (including accessory structures) should not be located within the River Protection Zone, provided however, that clustering may be permitted as long as it does not result in multi-family type structures and remains as single family detached units;
 - c. New supplementary regulations for accessory structures associated with existing development within the River Protection Zone should be adopted to ensure that any shield constructed for noise producing mechanical equipment complies with the federal floodplain protection standards; and
 - d. New supplementary regulations should be developed for new accessory structures (e.g., satellite dishes) not to be located in a waterfronting yard of a primary structure that fronts the River or without adequate buffering.
2. The Board of County Commissioners adopted a transmission tower ordinance No. 98-001 on April 7, 1998, whereby transmission towers shall be prohibited within the Myakka River Protection Zone designated on the Apoxsee Future Land Use Map. In addition, towers will be setback a distance 7 times the proposed tower height from the protection zone and Public Conservation/Preservation areas.

Background: The proposed 150 foot setback for residential development represents a balance between the statutory provisions "to minimize potential adverse physical and visual impacts on resource values in the river area and to minimize adverse impacts on private landowners use of land for residential purposes"(Section 258.501(5)(c)12, Florida Statutes). In response to this directive, the Myakka River Management Coordinating Council undertook a study to define visual, or scenic, resource values in the river area, to identify concerns related to those values and to recommend action strategies that would minimize adverse impact on those values.

The study, conducted by Hunter Services, Inc. included an extensive investigation of the visual corridor along the length of the Myakka River included in the wild and scenic river designation. Hunter Services defined the river's visual corridor based on field observations as between 150 and 2,220 feet, with an average of 220 feet. The highest priority concerns associated with the scenic resource value were identified as follows:

- Increased development within the viewshed, particularly in presently pristine areas;
- The quality of existing development and related improvements along the river;
- The intrusion of tall structures which impact substantial portions of the river corridor; and
- Artificial light as it relates to the disruption of stargazing, wilderness experiences, and plant and animal life.

The Myakka Wild and Scenic River Management Plan that was adopted by the Myakka River Management Coordinating Council and subsequently, on May 22, 1990, accepted by the Governor and Cabinet included the following two major actions designed to address the issue related to protecting the scenic resource values of the river:

- "that a 'wild and scenic protection zone' be created as a supplemental buffer area extending 220 feet on each side of the river, as measured from the landward edge of the river area." This recommendation was embodied in legislation revising the Act in 1990.
- Action 1.8 which reads as follows: "Sarasota County should revise its habitat-based regulatory programs to include protection of wetlands and hammock vegetation specifically along the Myakka River. The County should revise language in Apoxsee to provide for regulation of existing upland vegetation at a minimum of 220 feet wide to be required around all wetlands/surface waters that are contiguous to the designated Myakka River area. Apoxsee should also be revised with language that provides for special protection to wetland-fringing hammocks that are contiguous to the wetlands and/or surface waters along the designated Myakka River area from river mile 7.5 to river mile 41.5."

Existing County regulations, as set out in the "Principles for Evaluating Development Proposals in Native Habitats" require minimum buffers of upland vegetation with a width of 30 feet around wetlands and 50 feet when such buffers include areas of mesic hammock. The Zoning Ordinance requires a 50 foot setback for waterfront yards. County regulations also require a setback of 100 feet for all onsite septic tanks (or other OSTDS's) from rivers, streams and canals. Acceptance of the recommendation contained in Action 1.8 of the Management Plan could, therefore, be construed to represent a considerable extension of buffers along the Myakka River.

The Board of County Commissioners adopted Amendments RU-14 in February 1994 and RU-30 in July 1997 through which language was incorporated into Apoxsee (Environment Policy 5.2.3.) consistent with the requirements of the Act. The policy calls for the enactment of ordinances or amendment of "existing ordinances that

protect the Myakka River." It specifically states, "In accordance with Section 258.501(6)(a), Florida Statutes, development which affects the designated 'wild and scenic protection zone' of the Myakka River shall meet standards which conform to or are more stringent than standards developed pursuant to [the Act]..., including standards found in the Myakka Wild and Scenic Management Plan accepted by the Governor and Cabinet on May 22, 1990..."

On December 16, 1997, the Board of County Commissioners adopted the State-Local Agreement for Administering the Myakka River Wild and Scenic River Protection Zone, including the provision requiring the County to "adopt an ordinance that sets forth the County's legal responsibilities, activities that will be regulated, and procedures for regulating activities in the Protection Zone. If necessary, the County shall amend the County's land development regulations and other appropriate ordinances within one year after the adoption date of this Agreement so that regulations that affect the Protection Zone conform to, or are more stringent than, the Act, the [Management] Plan and this Agreement."

Thus, prior to the consideration of proposed Ordinance No. 98-025, a higher level of protection, i.e., increased upland buffers, has been consistently anticipated through enactment of amendments to Chapter 258 establishing the Protection Zone by the Legislature, acceptance of the Management Plan by the Governor and Cabinet and adoption of Environment Policy 5.2.3. by the Board. In its consideration of the issue of increased setbacks for residential structures with the Protection Zone, however, the MRPAB clearly stated that it was not its intent to render existing lots completely unbuildable within the Protection Zone. The recommended 150 foot setback is intended to strike a balance between the requirement stated in Action 1.8 of the Management Plan that could be construed as a mandatory 220 foot buffer, i.e., the entire Protection Zone, and the statutory provision "to minimize adverse impacts on private landowners' use of land for residential purposes."

Unless otherwise provided by law, the Myakka River Wild and Scenic River Rule section 16D-15.005(5) prohibits constructing, erecting, or installing any form of structure not related to a water-dependent activity, and section 16D-15.005(8) specifically prohibits the construction of new marinas. Section 16D-15.006(2)(d) of the Rule provides a permitting process for constructing, installing, expanding, or renovating marinas, landings, boat ramps, docks, mooring buoys, pilings, dolphins, decks, or piers. The proposed changes to the Zoning Ordinance to prohibit new non-residential development within the Protection Zone are intended to acknowledge existing uses and be consistent with the permitting requirements contained in the River Rule.

Additional recommendations for researching setback requirements related to septic tanks and associated drainfields are discussed in Section (E) Public Facility Plans on

page A - 26. The recommendations for new development and accessory structures should be sufficient to block noise traveling towards the River.

The recommended changes to the Zoning Ordinance will not consider the replacement and maintenance of an accessory structure associated with an existing residential dwelling, such as replacing an old air conditioner with a new one. The proposed changes, instead, would affect redevelopment. If a dwelling has sustained damage more than fifty percent of the replacement cost at the time of destruction, the reconstruction, including all electrical devices, must be elevated above the 100-year flood elevation (not including submersible pumps) to meet federal flood protection standards. Any structural screening, such as a deck railing, must be of sufficient integrity and strength to withstand wind loadings. Current regulations also require accessory uses and structures to be located in rear yards of residential dwellings which may face the River.

Objective D: To ensure that any future roadway and bridge crossings of the Myakka River minimize environmental impacts. (See related Objective P, page A - 29)

Implementation Action: The County should process an amendment to the Earthmoving Ordinance to establish an exemption review for utilities, similar to that currently being done for new roadways and stormwater improvements, to ensure that such projects comply with the Myakka River protection measures contained in Apoxsee.

Background: An exemption review should be established to ensure that the utility project complies with the Myakka River protection measures contained in Apoxsee. The County Transportation Department anticipates a need for future bridge crossings, roadway and utility extensions for public use. Close coordination among the various agencies will be required to minimize environmental impacts. An exemption review for utilities similar to that currently being done for new roadways and stormwater improvements, may be established.

Objective E: To protect the Myakka River Protection Zone from incompatible land uses.

Implementation Actions:

1. The County should process an amendment to the Zoning Ordinance for each relevant zoning district that has been or may be applied to the river protection zone as follows:
 - a. Identify appropriate permitted uses and structures.
 - b. Identify permitted accessory uses and structures.
 - c. Identify prohibited uses and structures.

- d. Identify special exceptions.
- e. Establish a maximum height of structures.

(See the Appendix page A - 30 for a list of specific changes to the Zoning Ordinance endorsed by the MRPAB)

- 2. The County should process an amendment to the Earthmoving Ordinance to ensure consistency with the Myakka Wild and Scenic River Management Plan and establish setbacks for excavating and filling within the River Protection Zone.
- 3. The County should process an amendment to the Tree Protection Ordinance (and the County's Land Development Regulations) to prohibit clear-cutting within the River Area, consistent with the Myakka River Wild and Scenic River Area Rule (Section 16D-15.005(2) Florida Administrative Code)
- 4. The County should process an amendment to the Land Development Regulations (LDR) to ensure all new divisions of land, wholly or partially within the Myakka River Protection Zone, be subject to all provisions of the LDR.
- 5. The County should process an amendment to the LDR to establish "minor subdivision" standards for developments involving ten lots or less having a minimum lot size of 5 acres.

Background: Process an amendment to the Zoning Ordinance to establish an overlay zone, or otherwise modify applicable District regulations, to address appropriate permitted uses and structure in conformance with The Myakka Wild and Scenic River Management Plan (MWSRMP). The MWSRMP (refer to page 5-9) recommends that the following activities should be prohibited, except their appurtenant structures which may be permitted if they have no adverse visual or measurable adverse impacts to resource values in the river area:

- Landfills,
- Clear-cutting,
- Major new infrastructure facilities,
- Major activities that would alter historic water or flood flows,
- Multifamily residential development,
- Commercial and industrial development, and
- Mining and major excavations.

The County's Earthmoving Ordinance No. 81-60, as amended, should be revised to ensure consistency with the MWSRMP. In addition, process an amendment to the

38-025

County's Tree Protection Ordinance No. 83-44 in order to prohibit clear-cutting within the River Area.

Process an amendment to the LDR to ensure that new developments involving the platting of watercourse buffers will be subject to the LDR subdivision standards by amending Section B1.1a of the LDR. The County currently exempts the creation of lots, five acres or larger, which abuts streets lawfully established before June 1, 1994. Exemptions for plats that may affect a watercourse, such as the Myakka River, should be eliminated. In addition, "minor subdivision" standards should be established to govern plats involving ten lots or less having a minimum lot sizes of 5 acres. For larger subdivisions, greater than 10 lots, the current LDR subdivision standards would apply to such developments.

(D) PLANNING TOOLS, PROGRAMS AND STRATEGIES TO IMPLEMENT THE GOALS AND OBJECTIVES REFERRED TO IN (B) ABOVE

Objective F: To protect wetlands and mesic hammocks adjacent to the Myakka River.

Implementation Action: Continue implementing the existing environmental principles and policies in Apoxsee. (Note: Also refer to proposed amendments to the Tree Protection Ordinance under Objective E #3 on page A - 18).

Background: This objective is addressed under existing Apoxsee Principles for Evaluating Development Proposals in Native Habitats and Policies.

Objective G: To protect the water quality and quantity of the Myakka River by ensuring that agricultural best management practices are implemented.

Implementation Action: Continue applying agricultural best management practices, as provided in the County's Earthmoving Ordinance, consistent with Environmental Policy 5.2.6 of Apoxsee.

Background: This objective is addressed under an Apoxsee policy. A procedure is already in place in the County's Earthmoving Ordinance (No. 81-60, as amended) to review new agricultural operations. Agricultural operations are regulated under this ordinance in the sense that permits are required unless exemption criteria are met. Those criteria include possession of a permit (or exemption) from the District and adherence to the Natural Resources Conservation Service's (NRCS) Policy for Protection of Wetlands for Agricultural Uses. That policy is a component of NRCS's best management practices. Furthermore, an exemption can only be issued if the agricultural entity obtains plan approval by the Agricultural Development Review Committee. The NRCS is represented on that committee. The members verify that

the project is bona fide agriculture and that the applicant proposes to follow accepted agricultural practices.

Objective H: To protect the water quality of the Myakka River from illegal dumping.

Implementation Actions:

1. The County should provide public information on the laws that prohibit dumping into the Myakka River.
2. The County should strictly enforce existing regulations.
3. The County, as part of its educational efforts for protecting native habitats, should promote the proper use of fertilizers, pesticides, and herbicides in accordance with instructions on labels and the County's Integrated Pest Management (I.P.M.) Program.

Background: More public information efforts would be helpful. The Sheriff's Department, in cooperation with the Construction and Property Standards Department and the Pollution Control Division, will increase enforcement of the existing rules. Proper applications of fertilizers, pesticides and herbicides are assumed to occur in accordance with instructions on labels and applying the County's I.P.M. program. Apoxsee encourages educational efforts to address this topic. This objective is addressed under an existing Apoxsee Environment Policy 5.7.3. The Pollution Control Division designates any reported illegal dumping into the Myakka River that occurred recently as an urgent case and an inspection will be performed immediately by staff. Reported dumping that may have occurred a month ago will not be designated urgent. Water sampling is done in cases where there may be a contamination problem as determined by staff. Arrangements for such water-quality testing may be required of the responsible party. Proper clean-up measures and enforcement actions are taken should the test results indicate that State water quality standards have been violated.

Objective I: To preserve natural resource areas by acquiring from willing sellers, properties located along the Myakka River.

Implementation Actions:

1. The County should continue the established voluntary environmentally sensitive lands acquisition program for property located adjacent to the River.
2. The County should advocate parcels along the River for acquisition by the Southwest Florida Water Management District's Save Our Rivers Program

that comply with the criteria approved by the County in identifying environmentally sensitive lands.

Background: In 1992, the Board established a protection program for environmentally significant lands within Sarasota County. The Board, in considering the recommendations from an advisory committee and Natural Resources Department staff, will adopt a protection priority list and determine appropriate measures for protection, including less-than-fee simple options. No property will be included on the protection priority list without the owner's consent in accordance with Sarasota County Ordinance No. 94-009.

The ecological selection criteria for determining environmentally significant lands were adopted by the Board and are contained in Resolution No. 92-272. These five criteria include rarity of species or habitat, connectedness, ecological quality, manageability, and importance to water resources. The MRPAB was concerned that small parcels may not be considered for acquisition purposes. The size of a parcel is addressed as a secondary factor under at least two of the five criteria established by the County: connectedness and manageability. A small size parcel may not be ranked high for connectedness since it may be isolated from significant corridors of native habitats or there may be a barrier to the dispersal of animals. A small parcel may be too vulnerable to external impacts from neighboring land uses and trespass. On-site management practices on small parcels may adversely impact adjacent lands due to the lack of sufficient buffers. Fire management on small parcels, if possible, may be difficult and can be inordinately expensive.

The rank assigned to parcels is determined by the presence of one or more attributes identified under the ecological selection criteria. The Environmentally Sensitive Lands Advisory Committee (ESLAC) and staff will consider any parcel nominated by property owners and citizens regardless of the size of the parcel. Relatively small parcels within the southern coastal portions of the County have been designated areas of high environmental significance, primarily due to the rarity of the on-site natural communities such as scrubby flatwoods and beach dune systems. Larger parcels along the Myakka River also have been designated which rank high under the criteria of connectedness, manageability, and importance to water resources. Some of these parcels also are designated under the Southwest Florida Water Management District's Save Our Rivers (SOR) Program.

Objective J: To protect natural resource areas by encouraging the use of and establishing additional incentives for owners of property located along the Myakka River.

Implementation Actions:

1. The County should implement a conservation easement program to create a

River corridor using less-than-fee simple methods, to acquire development rights of property owners and help protect River values.

2. The County should adopt a comprehensive plan amendment(s) which would transfer development credits from sites of high ecological value, floodprone areas, wetlands and mesic hammocks such as those along the River to other areas.

Background: The Environmentally Sensitive Lands Advisory Committee (ESLAC) and staff are considering all methods for environmentally sensitive lands protection including less-than-fee simple alternatives.

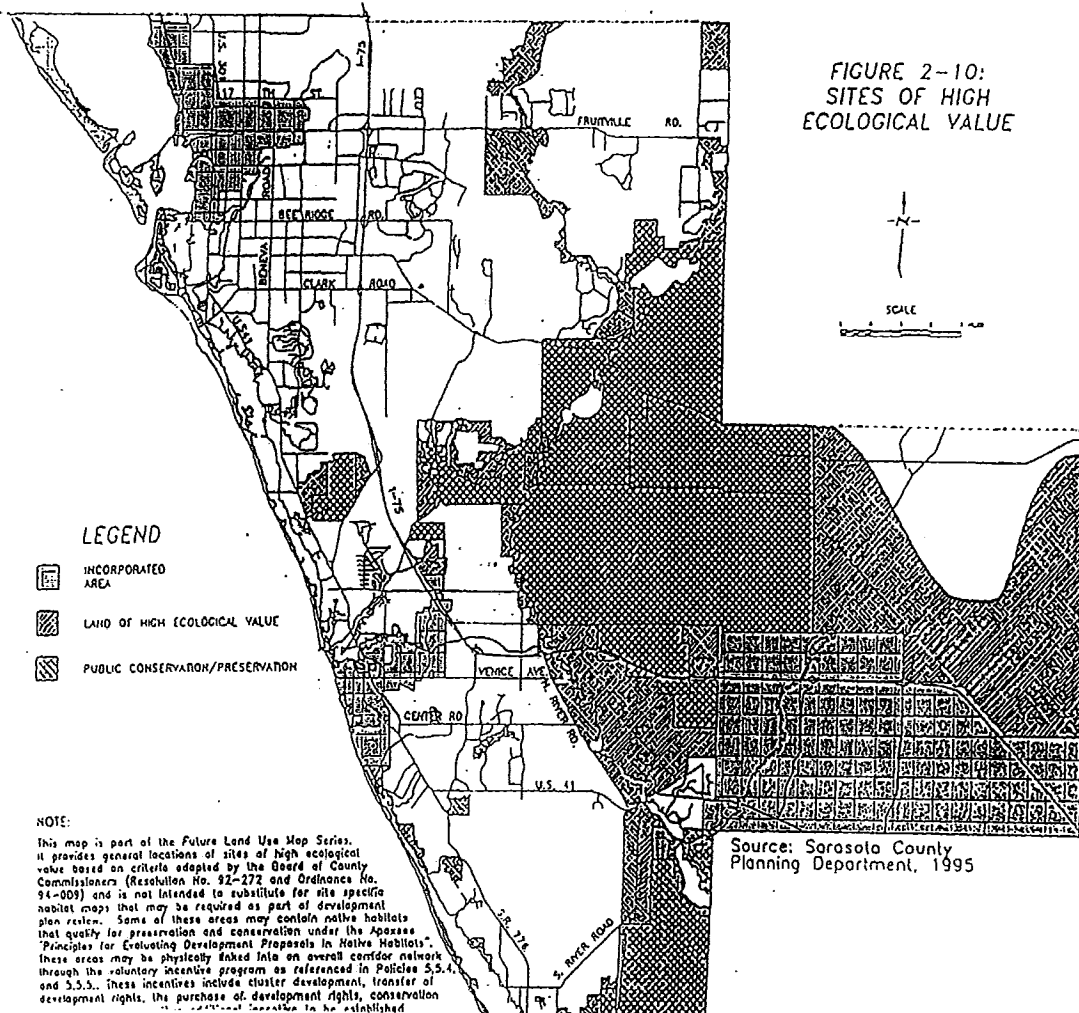
The MRPAB considered incentives for transferring development rights from areas along the River. An extra density bonus was considered by the MRPAB for the County's existing Transfer of Development Rights (TDR) program. The TDR alternative has been available for a number of years within the County. It has not proven successful since there is limited demand for the unit credits to be transferred to a receiving site. Most developments within designated Urban Areas do not meet the maximum density allowance under a given zoning district due to land use compatibility, environmental and infrastructure capacity issues. A bonus credit in most cases, may not serve as a true incentive.

An alternative incentive approach that is being recommended by the MRPAB which involves comprehensive plan amendments. Future Urban Area designations on the Apoxsee Future Land Use Map are intended to be the areas considered for future urban development when an extension of the Urban Service Area is warranted. There is a concern, however, that these Future Urban areas may be platted into five acre or greater residential parcels prior to receiving an Urban designation to accommodate future growth. Planning staff, in consultation with Natural Resources staff, prepared a comprehensive plan amendment proposal (RU-39) that allows transfer of development credits from sites of high ecological value (see attached Figure 2-10 of the Apoxsee Environment Chapter); areas of special flood hazard; Category 1 or Category 2 storm surge areas; or watercourses or slough systems, along with associated wetlands and mesic hammocks, to areas designated Future Urban Reserve. On June 9, 1998 the BCC adopted comprehensive plan amendment RU-39.

Conservation easements and in some cases, a 200-foot wide buffer would be required to protect these environmentally-sensitive and/or floodprone areas. A similar concept will be considered by staff as part of its planning effort for areas located east of I-75.

The majority of the areas along the Myakka River will qualify for development credits in exchange for preservation commitments.

2006-2011



Objective K: To create, enhance, restore and preserve wetlands along the Myakka River by establishing off-site mitigation areas to meet State and other agency requirements.

Implementation Action: Support the County's development of additional criteria for off-site mitigation and mitigation alternatives by 1998 consistent with Environment Policy 5.5.13 of Apoxsee.

Background: The off-site mitigation areas must meet the County's existing and future mitigation requirements including the confinement of mitigation sites to flatwoods (except scrubby flatwoods), improved pasture or substantially disturbed areas and where the water table is still at sufficient levels to sustain wetland vegetation (refer to the Environmental Technical Manual of the LDR). During the calendar year 1998, staff will be preparing rule changes to establish additional criteria for mitigation options, including off-site mitigation.

Objective L: To notify future landowners along the Myakka River of the protection measures and requirements.

Implementation Actions

1. County Planning staff should designate on half-section sheets the boundaries of the River area and protection zone similar to that being done for areas within and in vicinity of public supply wells and wellfields pursuant to County Ordinance No. 92-079.
2. A notice should be sent to property owners identifying the existence of the River Area, the Protection Zone, the "Myakka River Wild and Scenic Management Plan", the "Myakka River Wild and Scenic Designation and Preservation Act" and other pertinent environmental regulations and protection measures. A governmental agency or another non-profit organization performing such a mailing may request the County Property Appraiser's Office to prepare a mailing list of property owners and this list may be updated on an annual basis.

Background: The County Planning Department maintains and updates information designated on half-section maps covering the unincorporated areas of the County. These maps are referenced by property owners and prospective buyers, and are used by commercial real estate interests. This has proven to be a successful tool in notifying property owners of wellhead protection requirements.

It is not feasible for the Property Appraiser to notify owners having property lying within the River area and/or protection zone. For instance, the property tax bill can

not be physically modified and expanded to describe to the affected property owners all of the Myakka River requirements. Should a notification mailing be done by another agency or non-profit organization, the Property Appraiser's Office offered to provide assistance in confirming and updating a list of affected property owners on an annual basis.

When the Myakka River Protection Ordinance is brought before the Board of County Commissioners for public hearing, the property owners within and adjacent to the Protection Zone will be notified.

Objective M: To encourage the establishment of a homeowners/property owners association along the River for the purpose of information exchange and education.

Implementation Action: A neighborhood or a property owners association could be established to promote and protect the River values. Annual meetings could be held, possibly after River cleanup events, to encourage residents to participate in activities affecting the River. The MRPAB also recommended an annual mailing to provide information to the residents.

Background: Local government should not take the lead in this effort since the establishment and maintenance of other homeowners' associations throughout the County are civil matters and not of a regulatory nature. The County, however, has set a precedent in assisting the Clark Road Property Owners Association, as an implementing mechanism of the Clark Road Corridor Plan.

Objective N: To promote the long-term management of wildlife along the Myakka River.

Implementation Action: The County should prepare a long-range Wildlife Management Plan with three components: continue coordination with the management plans of other agencies; continue implementation of management plans for County-owned land including conservation easements; and prepare a listed species protection plan consistent with Environmental Policy 5.4.2 of Apoxsee.

Background: This objective is addressed under Apoxsee objectives and policies. Part of the MRPAB's recommendation has been completed since resource management plans (including management of native habitat to maintain and enhance wildlife utilization) have been approved and are being implemented by the County for the Carlton Memorial and Pinelands Reserves. These plans are coordinated and compatible with management plans developed by the State DEP (the Myakka River State Park) and the District (e.g., the Myakka Prairies).

On June 10, 1997, the Board of County Commissioners adopted a revision to Environment Policy 5.4.2 that a plan be prepared to allow the County to enforce

guidelines adopted by the State and federal agencies or specific authorizations granted by the State and federal agencies that protect listed species occurring within the County. Such a plan will improve the monitoring of listed species within development areas. In addition, the Board added a clarification to this policy such that more stringent requirements may be adopted by the County when deemed appropriate. The County, in consultation with the Florida Game and Fresh Water Fish Commission, will determine whether the local Habitat Conservation Plan will focus on a single species (Florida scrub jay) or involve multiple listed species.

(E) PUBLIC FACILITY PLANS

Objective O: To protect the surface and ground water quality of the Myakka River Area by installing appropriate sewage treatment measures.

Implementation Actions:

1. The County should investigate an innovative program whereby government would assume more of the costs related to central sewer hookup for property owners that keep development out of the Myakka River Protection Zone.
2. The County should research the scientific basis for the adoption of an ordinance, or process an amendment to an existing ordinance, such that new septic tanks and associated drainfields are setback landward for environmental reasons from the Myakka River Protection Zone. Other permissible "on-site sewage treatment and disposal systems" (OSTDS) may be considered within the protection zone. The County will also examine the cost of providing facilities (i.e. lift stations and transmission lines) versus the actual cost of purchasing the land. In addition, revise the County's Earthmoving Ordinance to allow permissible Type A fills for wastewater treatment mounds and pads but prohibit Type A fills for other activities in the Protection Zone.
3. The County should process an amendment to the LDR's such that platting of new lots along the Myakka River is prohibited where on-site sewage treatment and disposal systems can not be sited in accordance with the proposed restriction under No. 2.
4. The County should require central sewer connections for any proposed comprehensive plan amendment that would increase the density allowance in vicinity of the Myakka River Protection Zone. A proposed amendment would require evaluation in light of the other 4 requirements listed under this objective.

78-02A

5. Support the County's application of existing regulations governing the construction and maintenance of on-site sewage treatment and disposal systems within rural residential lots.

Background: An investigation regarding #1 would be required in order to develop such an innovative program. A program which essentially provides incentives to property owners, in the form of financial subsidies, would require funding sources that are outside of the current enterprise fund structure.

Scientific research addressing environmental impacts would be necessary in order to support new regulations requiring that septic tanks and drainfields be set back from the Protection Zone. The MRPAB identified three reasons in recommending a prohibition of OSTDS within the Myakka River Protection Zone which involve the protection of water quality, avoidance of filling within the floodplains resulting from the construction of mounded systems, and avoidance of an aesthetic impact of mounded systems to the River.

Over the last 25 years, the County has maintained records of OSTDS failures. Some reported failures have occurred within properties located along the Myakka River. The rate, based on 25 years of records, is less than two failures per year within the Myakka River Protection Zone. Not all failures, however, are reported to the regulatory agencies. The incident of failure Countywide has been drastically reduced for those OSTDS's located within large lots and meeting standards adopted by the County in 1983. The 1983 standards have substantially reduced the incidence of OSTDS failures Countywide and increased the functional life for these systems which delay the need for repairs. A good repair to an old system within a large lot will have comparable treatment capacity to that of a new system according to County Health Department staff.

The County currently prohibits OSTDS on lots one-half acre or larger, which are located laterally within one hundred feet of the ordinary high water mark of non-tidal lakes, streams, canals, bays, rivers and ponds, or within one hundred feet of the mean high water line of tidal bodies or water, including bays and tidal portions of rivers, streams and canals (refer to Section 6.(1)(e) of Ordinance No. 83-083). In addition to setbacks, the County requires a minimum elevation for OSTDS above the water table elevation at the wettest season of the year. For lots platted on or after June 15, 1983, the required minimum elevation is thirty six inches between the highest expected water table elevation and the bottom infiltrative surface of the drainfield (refer to Section 3.(3)(m) of Ordinance No. 83-083). The setback and elevation requirements meet or exceed the State criteria for OSTDS (Chapter 10D-6, Florida Administrative Code).

According to the County Health Department, low-density residential development

relying on on-site sewage treatment and disposal systems is often the only practical means of dealing with wastewater disposal in rural areas. The County's Land Development Regulations (LDR) currently requires a central sewerage treatment system for all developments (commercial, industrial and residential) based on the total volume of sewage flow (in excess of two thousand gallons per day) or distance to a sewer connection having sufficient capacity, unless the development qualifies for an exemption. These exemptions are provided under Sections B.6.a. and E.1.b. of the LDR Subdivision and Development Improvements Technical Manuals, respectively. Two of the exemptions that affect residential development within the Myakka River study area (refer to Section B.6.a. of the LDR Subdivision Technical Manual) are as follows:

Subdivisions having a maximum number of fifteen lots and a minimum lot size of one acre or larger and a minimum average lot dimension of one hundred and fifty feet may be developed with private well and OSTDS upon compliance with the requirements of Sarasota County Ordinance No. 83-083 and Chapter 10D-6, F.A.C.

Subdivisions having a minimum lot size of five acres or larger may be developed with private well and OSTDS upon compliance with Ordinance No. 83-083 and Chapter 10D-6, F.A.C.

County Health Department staff has the professional opinion that current State and local regulations controlling the elevation, design and inspection of OSTDS, coupled with predominately large existing parcels within this region, render it unlikely that future OSTDS will have a negative public health impact on the Myakka River Area.

No immediate action is necessary regarding the implementation of recommendation #3 until the scientific research identified in recommendation #2 has been completed.

MRPAB recommendation #4 is consistent with the Myakka River Management Guideline V.B.2.c., that was adopted in Comprehensive Plan Amendment RU-14 as part of Apoxsee Principles for Evaluating Development Proposals in Native Habitats. Implementation of the provision must, however, take into consideration the provisions of Environmental Policy 4.3.1. related to limiting the funding of infrastructure within the Coastal High Hazard Area (CHHA).

County Health Department staff indicate that environmental impacts from nitrogen and other nutrients can best be addressed by the effective use of current zoning designations within the Myakka River Protection Zone proposed rezonings that increase densities to levels likely to produce environmental impacts. Comprehensive plan amendment RU-14 has been the only proposal in recent years to increase the density allowance in vicinity of the Myakka River Protection Zone. This adopted amendment redesignated lands lying south of I-75 and east of River Road from a

Rural to a Semi-Rural Area. A condition was imposed by the County such that development on this parcel must be served by a central sewerage treatment system.

The Myakka River forms the eastern boundary of the County's Curry Creek Service Area, which generally extends from the Laurel Road area on the north to the Center Road area on the south. Therefore, a significant portion of the Myakka River protection zone that lies on the west side of the river is contained within the Curry Creek Service Area. The planned sewer connections, along the west side of River Road, the eastern-end of Laurel Road and along Border Road, that may be available to serve development within this portion of the protection zone are included in future phases of the Curry Creek master plan. These phases however, are not included in the County's current five-year capital improvements plan.

Objective P: To support efforts in co-locating linear facilities thereby minimizing impacts to the Myakka River.

Implementation Action: The County should recommend that new road and bridge crossings utilize existing routes and process an amendment to the Environment Chapter of Apoxsee to create a policy to utilize existing route crossings wherever possible. The County should continue to support the Myakka Conservancy's "Myakka River Basin Connectivity Project" which involves dialogue between stakeholders and Conservancy representatives, with support from other sources, to identify opportunities to co-locate linear facilities and consequently, minimize impacts to the River.

Background: County departments and other governmental agencies should co-locate facilities where possible, to reduce costs and minimize environmental impacts. The connectivity project has been completed and involved the development of planning strategies to avoid "parcelization" of lands within the Myakka River Basin due to infrastructure extensions and land uses. The three components of this project were: identify proposed linear facilities and major land use changes; expand contacts with major landowners and agencies within the Myakka River basin; and manage a dialogue between stakeholders that becomes, through Conservancy leadership and other sources of support in subsequent years, the vehicle to co-locate facilities and mitigate impacts.

APPENDIX

The following are permitted uses and structures that will be analysed by Planning staff for individual zoning districts or for an overlay zone as to whether they could be applied to the River Protection Area:

Public and private game preserves and wildlife management areas.

Publicly owned parks, campgrounds, passive recreation areas, and uses and structures appropriate for such activities.

Recreational trails and passive recreation areas on private lands.

Private camps (including day camps) for young people, such as boy or girl scout camp or church camp.

Private hunting and fishing camps.

Non-commercial and permitted piers, docks, and wharves in accordance with Sarasota County Ordinance No. 72-84 as amended.

One single family dwelling per lot or parcel. Such dwelling to be occupied by one family.

Home occupations. There shall not be evidence of business activity on the premises including the parking and storage of commercial vehicles (except where the primary household vehicle is used for commercial use), material storage, inordinate vehicular traffic, outside storage or advertising signs.

Agricultural uses, including accessory structures and uses incidental to agricultural activity, except otherwise addressed herein.

Artificial lakes and other excavations in accordance with Sarasota County Ordinance No. 81-60 as amended, involving up to 10,000 cubic yards of Type A fill.

Essential utility services.

Emergency services.

Commercial radio or television receiving dish, with or without a tower, provided that dish antennas are totally screened from view from the Myakka River area and shall not exceed 16 feet in height.

Temporary storage of recyclable materials.

Cemetery or mausoleum existing prior to the date of this amendment.

The following are permitted accessory uses and structures that will be analysed by Planning staff as to whether they could be applied to the River Protection Area:

Uses and structures which:

Are customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures.

Do not involve the conduct of business on the premises, except as accessory to a permitted use.

Are located on the same lot as the permitted or permissible principle use or structure, or on a contiguous lot in the same ownership.

Are located no closer than 150 feet landward of the Myakka River area, except that gazebos shall be considered for exemption.

Are not of a nature likely to attract visitors in larger numbers than would normally be expected in a protected river area.

Do not involve operations or structures not in keeping with the intent of the river protection zone.

Provide for accessory uses and structures including private garages, tool houses, barns, non-commercial greenhouses, garden sheds, garden work centers, childrens' play areas and play equipment, private barbecue pits, private swimming pools and the like.

Provide for the keeping of horses or ponies for private riding use, provided that no private stable or shelter for the animals is located within the river protection zone and selective clearing for pasture creation occurs no closer than 220 feet landward of the Myakka River area.

The following are prohibited uses and structures that will be analysed by Planning staff as to whether they could be applied to the River Protection Area.

Any use of structure not specifically or provisionally permitted herein. Listed permitted or permissible uses do not include either as a principal or accessory use any of the following which are listed for emphasis:

Landfill.

Recycle facility, associated equipment, stockpiles, containers, and incinerators.

Public incinerator.

Wastewater treatment plant and effluent percolation disposal ponds.

Land application of septage.

Underground and above ground petroleum product storage facility.

Facility for the bulk storage, handling or processing of regulated substances including hazardous substances, except for those substances contained in vehicles, existing and new permitted pipelines, original containers for retail purposes such as fertilizers and cleaning fluids, and any other regulated substances routinely used in residences, offices, business establishments, and utilities.

Jails, detention facilities or work camps.

Manufacturing and industrial establishments.

Wholesale, warehouse or storage establishment.

Junk yard or automobile wrecking yard.

Sale of new or second-hand merchandise of whatsoever type or kind, except as accessory to a permitted use.

Contractor, construction, or equipment yard.

The parking and storage of trucks, buses, vans, tractors and trailers in excess of 5,000 lbs. vehicle empty weight, as listed on the vehicle registration form that are not used exclusively for agricultural purposes on the premises.

The outside parking, storage, service and/or repair of any unregistered or unlicensed vehicles except those operable vehicles that are permitted as incidental to permitted principal uses allowed in the river protection zone and located no closer than 220 feet landward of the Myakka River area.

The operation of a business is prohibited unless specifically permitted.

Private and public schools or libraries.

Governmental building.

Circus grounds, winter quarters or training quarters.

Aircraft landing field, including heliport.

Lighter-than-air aircraft operations, including launching and landing of hot-air and free balloons.

Mining.

Borrow pits.

Other earthmoving including fills, stockpiles, and removals of soil from premises unless an earthmoving permit is issued pursuant to the findings contained under Section 3.G. of Ordinance No. 81-60, as amended.

Discing or removing ground vegetation except to extent necessary for protection of roots of plants, unless a determination is made by the Board of County Commissioners, after report by the Natural Resources Department, that removal will not adversely affect control and conservation of water and other natural resources.

Plant nursery involving sales of plants, garden supplies and equipment.

Commercial greenhouse.

Retail and wholesale sales of agriculturally related supplies and equipment.

Structure for keeping and raising of livestock, poultry, exotic animals, and farm animals, including stockyards and feeding pens, is prohibited unless specifically permitted:

Slaughterhouse for livestock and poultry.

Livestock auction.

Commercial packing house for fruits and vegetables including citrus concentrate plant.

Milk processing plant.

Row crops or citrus groves.

Cutting and milling of timber including processing of forestry by-products.

Salvage, service, and rebuilding of industrial water pumps and motors used for agricultural purposes.

Riding academy or commercial boarding stable.

Animal hospital, veterinary clinic, animal boarding place, fur farm and dog kennels.

Wild animal sanctuary.

Housing, including mobile homes, for farm or ranch labor.

Migrant labor camps.

Residential migrant housing.

Mobile or recreational vehicle park/campground except for those existing prior to the effective date of this amendment.

Multi-family housing.

Child care center.

Hospitals, sanitariums, rest homes, nursing homes, convalescent homes, adult congregate living facilities (ACLF's), extended care facilities, patient family transient accommodations, and homes for orphans and the aged.

Golf course, including executive par-three and miniature golf courses and associated country clubs.

Seaplane landing.

Golf driving range.

Off-site signs.

Transmission tower.

Any use that is potentially dangerous, noxious, or offensive by reason of smoke, odor, noise, glare, fumes, gas, vibration, emission of particulate matter, threat of fire (except for prescribed burning) or explosion, interference with radio and television reception, radiation, or likely for other reason to be incompatible with the character

of the Myakka River protection zone.

The following are special exceptions that will be analysed by Planning staff as to whether they could be applied to the River Protection Area:

(Permissible after Public Notice and Hearings by the Planning Commission and the Board of County Commissioners, see Section 20, "Special Exceptions.")

Commercial hunting and fishing camps.

Fish hatcheries.

Commercial fisheries.

Monastery, convent, house of worship and the like.

New cemetery, columbarium, mausoleum or expansion of these facilities, subject to all applicable state regulations and provided that no grave, monument or structure shall be located closer than twenty-five (25) feet to property lines and closer than 150 feet landward of the Myakka River area.

Private club.

Commercial piers, docks, and wharves in accordance with Sarasota County Ordinance No. 72-84 as amended.

One guest house and/or servants quarters for each permitted single family dwelling (see Section 28.72 of the Zoning Ordinance).

Dude ranch, provided no building for the housing of animals is allowed within the river protection zone.

Family or child day care home.

Outdoor field archery range, provided no clearing occurs closer than 150 feet landward of the Myakka River area.

Buildings over thirty-five (35) feet in height. Special exception will consider the following: the relation to the existing tree canopy; the vistas from the River; and the compatibility of the building materials.

Definitions of terms as they apply to the Myakka River Protection Plan:

"BULK STORAGE" within the Myakka River area and protection zone shall include facilities for the underground and above ground storage of flammable liquids and hazardous substances or wastes with a maximum capacity exceeding 500 gallons.

"HAZARDOUS SUBSTANCE OR WASTE" is a regulated substance or contaminant that has one or more of the following characteristics due to quality, concentration, or physical and chemical properties; ignitability, corrosivity, reactivity, EP toxicity, or toxicity, infectious characteristics, radioactivity, mutagenicity, carcogenicity, teratogenicity, bioaccumulative effect, or persistence (non-degradability) in nature that may cause significant harm to the human health and the environment.

"LANDFILL" is the spreading, covering, or burying of Type A, B, C or D fill within a County operated landfill.

"MYAKKA RIVER (OR RIVER) AREA" means that corridor of land beneath and surrounding the Myakka River from river mile 7.5 to river mile 41.5, together with a corridor of land including the maximum upland extent of wetlands vegetation as determined by the Department of Environmental Protection pursuant to Chapter 403, Florida Statutes, and Chapters 62-3 and 62-312, Florida Administrative Code.

"MYAKKA RIVER (OR RIVER) PROTECTION ZONE OR AREA" means the same as the "wild and scenic protection zone".

"PRESCRIBED BURNING" means the controlled application of fire under a pre-determined set of environmental parameters in coordination with the Florida Division of Forestry, to simulate the natural role of fire or to accomplish specific land management objectives.

"RECYCLE FACILITY" means any facility which recycles solid waste.

"RECYCLING" means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, processed, and reused or returned to use in the form of raw materials or products.

"REGULATED SUBSTANCE" is the elements and compounds and hazardous waste appearing in Code 40 of Federal Regulations, Chapter 1, table 302.4, and as may be amended and updated from time to time, and identified on a list maintained by the County Utilities Department pursuant to the Wellfield Protection Ordinance No 92-079.

"SEPTAGE" is all solid waste containing human feces or residuals of such which is generated by any industrial or domestic wastewater treatment plant, water supply treatment

plant, air pollution control facility, septic tank, grease trap, portable toilet or related operation, or any other such waste having similar characteristics.

"TYPE A FILL" means earthen material essentially free of roots and other vegetative debris.

"TYPE B FILL" consists of concrete, rocks, broken asphalt, and other similar type inorganic and non-metallic materials.

"TYPE C FILL" consists of land-clearing debris.

"TYPE D FILL" consists of all other refuse not defined as Type A, B, or C fill, including but not limited to construction and/or demolition debris and garbage.

"WILD AND SCENIC PROTECTION ZONE" means an upland buffer that extends 220 feet on each side of the Myakka River wild and scenic designated river area (from river mile 7.5 to river mile 41.5) measured from the landward edge of the river area.

STATE OF FLORIDA
COUNTY OF SARASOTA
I HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE AND CORRECT COPY OF THE ORIGINAL FILES
IN THIS OFFICE WITNESS MY HAND AND OFFICIAL
STAMP
12/15/98
ON THIS DATE
KAREN L. WUSHING, CLERK OF THE CIRCUIT COURT
IN AND FOR THE COUNTY OF SARASOTA, FLORIDA
OFFICIAL SEAL
K. L. Wushing
CLERK

100-015

**APPENDIX F – Sarasota County Ordinance No. 2003-026, amending the
Earthmoving Ordinance No. 81-60**

DEC -4 AM 10:59

KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, RELATING TO BORROW PITS AND OTHER EXCAVATIONS, STOCKPILES, AND FILLS THROUGHOUT SARASOTA COUNTY; RESTATING AND AMENDING SARASOTA COUNTY ORDINANCE NO. 81-60 AS CODIFIED IN ARTICLE XII OF CHAPTER 54 OF THE SARASOTA COUNTY CODE; PROVIDING FOR CODING OF AMENDMENTS; AMENDING SECTION 54-341 RELATING TO THE PURPOSE AND FINDINGS; AMENDING SECTION 54-342 RELATING TO DEFINITIONS; AMENDING SECTION 54-343, RELATING TO APPLICABILITY AND INTERPRETATION OF ARTICLE; AMENDING SECTION 54-344, RELATING TO EARTHMOVING PERMITS REQUIRED; AMENDING SECTION 54-345, RELATING TO REQUIREMENTS FOR OBTAINING PERMITS AND SUBMITTING ANNUAL REPORTS; AMENDING SECTION 54-346, RELATING TO REVIEW PERIOD; AMENDING SECTION 54-347, RELATING TO REQUIREMENTS FOR EXCAVATIONS; AMENDING SECTION 54-348, RELATING TO REQUIREMENTS FOR FILLS, STOCKPILES, AND BURYING; AMENDING SECTION 54-349, RELATING TO EXEMPTIONS; AMENDING SECTION 54-350, RELATED TO VARIANCES; AMENDING SECTION 54-351, RELATING TO THE RESERVATION OF RIGHTS; AMENDING SECTION 54-352, RELATING TO EXCEPTIONS AND AMENDMENTS; AMENDING SECTION 54-353, RELATING TO ADMINISTRATION; AMENDING SECTION 54-354, RELATING TO ENFORCEMENT AND PENALTIES; AMENDING SECTION 54-355, RELATING TO SEVERABILITY; CREATING SECTION 54-356, RELATING TO A SUNSET DATE.

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

Section 1. This Ordinance amends Sarasota County Ordinance No. 81-60, as amended and as codified in Article XII, Chapter 54 of the Sarasota County Code.

Section 2. Chapter 54, Article XII of the Sarasota County Code is hereby amended to read as follows:

ARTICLE XII. EARTHMOVING

Sec. 54-341. Purpose and findings.

The Board finds and determines that:

- (1.) This article is enacted pursuant to law for the purpose of regulating earthmoving, including, but not limited to, the location and use of pits, lakes, excavations, stockpiles, and fills. It is recognized that commercial earthmoving enterprises

provide a valuable service, and positive economic benefit to the community. Specifically, it is the intent of this article to establish environmental safety regulations involving earthmoving that promote public health, safety, and welfare.

- (2) Earthmoving that is not governed by the County's Land Development Regulations, such as within established residential neighborhoods and borrow pit operations, also should be regulated for purposes provided herein.
- (3) Earthmoving activities may cause adverse impacts to watersheds, drainage patterns, native habitats, air and water quality, land use compatibility, historical resources and roads, and may create erosion and sedimentation problems.
- (4) Certain earthmoving operations may cause adverse visual, noise, vibration, dust, and safety impacts to surrounding areas.
- (5) Unauthorized Bburying or dumping of debris may cause sanitary and health hazards, subsidence problems, and nuisances from mosquitoes and vermin.
- (6) Unauthorized Echanges in topography, including filling of drainageways and relocating conveyances, could increase the flood potential and the impact of a destructive storm on human life, private structures, public facilities, and the economic viability of a community.
- (7) This article facilitates the implementation of the goals, policies, and principles of the County's Comprehensive Plan (Apoxsee) protecting the integrity of the natural environment and historical resources of the County, and meeting the social and economic needs of Sarasota County residents.
- (8) Wetlands provide water filtration, natural floodwater storage, critical habitat for numerous plants and animals, and maintenance of water tables.
- (9) The County roadways should be maintained as a safe, convenient, and efficient transportation system.
- (10) 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 Apoxsee, the Sarasota County Comprehensive Plan.
- (11) On December 8th, 1998, the Board of County Commissioners adopted the Myakka River Protection Ordinance No. 98-025, as amended. This ordinance directed staff to process amendments to Earthmoving Ordinance No. 81-60, as amended, consistent with the provisions of the Act, to minimize potential adverse physical and visual impacts on resource values in the Myakka River Area and to minimize adverse impacts on private landowners' use of the land for residential purposes.

- (12) Earthmoving activities hereby authorized pursuant to Ordinance 81-60, as amended, shall be consistent with the goals and objectives defined within the Myakka River Protection Ordinance No. 98-025, as amended.

Sec. 54-342. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

Abutting Property means any property that is either: immediately adjacent to; or contiguous with; or that is located immediately across any road or right-of-way from property that may be subject to any review or hearing required to be held under this article.

Applicant includes individuals, firms, partnerships, corporations, associations, organizations, trusts, companies, or any other legal entity that has applied for a Permit.

Board means the Board of County Commissioners or its designee.

Burying means placing Type B, C or D Fill, including yard trash, below original grade.

Closure means cleaning up and securing an earthmoving operation, including removing material stockpiles associated with a recycle facility, upon cessation of operation such that there is no threat to public health, safety, or the environment.

Closure Plan means a plan which describes reclamation measures to clean up and close an earthmoving operation authorized under a Level II or Level III Earthmoving Permit and addresses monitoring, maintenance, and bonding requirements.

Comprehensive Plan means the Environment Chapter of Apoxsee, the Revised and Updated Sarasota County Comprehensive Plan as adopted under Ordinance No. 89-18, as amended, to comply with the Local Government Comprehensive Planning and Land Development Regulation Act of 1985.

Conceptual Permit means a permit approved by the Board and issued by the Ordinance Administrator which approves the concept of a Master Plan for Level III Earthmoving.

Construction Plan or Site means any plan or site which has a valid construction authorization (as defined in the Land Development Regulations) from the County's Land Development Services office or has a valid building permit and approved lot grading plan issued by the County showing the full extent of filling, or has a permit in accordance with the provisions of this article.

County means Sarasota County, Florida.

County Administrator means the Sarasota County Administrator or his duly authorized representative.

Earthmoving means excavating lakes, pits, and depressions, and/or mounding, stockpiling, creating berms, installing or transporting Type A, B, C or D Fill.

Environmental Technical Manual means that section of the County's Land Development Regulations containing the technical specifications for mitigation areas, littoral zones, and other environmental systems.

Excavation means the act or process of creating a lake, borrow pit (whether or not materials are removed for commercial purposes), pond, retention area, swale, ditch, or depression.

Fill Removal means the removal by mechanical means of fill from the site of generation.

Filling means the placement, spreading, covering, or burying of Type A, B, or C Fill on a site. Filling does not include stockpiling.

Gardening means filling, excavating, grading, or mounding to prepare a plot for the cultivation of herbs, fruits, flowers, and vegetables. This does not include the creation of an agricultural row crop field or a pasture for commercial purposes.

Haul Route means the route or routes connecting the site of excavation or fill, as described by the permit application, with one or more public roadways under the jurisdiction of Sarasota County, of the functional classification of "collector" or "arterial," as adopted by the County in the thoroughfare plan of the Sarasota County Comprehensive Plan. The "Haul Route" shall include the intersection with the collector and arterial and also include any required turn lanes and traffic control devices.

Historic Resources means prehistoric or historic districts, sites, buildings, objects, or other real or personal property of historic, architectural, or archaeological value.

Land Clearing Debris is uprooted or cleared vegetation resulting from a land clearing operation and does not include yard trash.

Land Development Regulations means Sarasota County Ordinance No. 81-12 or its successor (Chapter 74 of this Code).

Landfill is the spreading, covering, or burying of Type A, B, C or D Fill within a County-operated landfill.

Landscaping means filling, excavating, grading, or mounding with Type A Fill or mulch material for the purposes of planting vegetation (e.g., grass, ground covers, shrubs, hedges, and trees) and installing or [of] supporting structural landscape architectural features (e.g., rock, fountains, waterfalls, sculpture, decorative walls, and tree walls).

Lawful Drainage Systems means stormwater conveyances, including swales and ditches, that existed prior to 1981 or are authorized by the County's Land Development Services office.

Listed Species means any animal categorized by the Florida Game and Fresh Water Fish Commission as endangered, threatened, or of special concern pursuant to F.A.C. 39-27.003, 39-27.004, and 39-27.005; or any plant or animal categorized by the U.S. Fish and Wildlife Service as endangered or threatened pursuant to 50 CFR 17.11-12.

Littoral Zone is that portion of any lake, borrow pit, or pond measured from seasonal high-water elevation in water bodies where water elevation is not controlled by structures, or from the overflow elevation in water bodies where water elevation is controlled by structures, to a depth of three feet. Littoral zones typically support rooted aquatic vegetation. Littoral zones also include those areas in salt or brackish water (gulf, bay, estuary) from the mean high-water elevation to a depth of three feet.

Master Plan is a plan which includes the boundaries and a description of the general design and operation of a commercial borrow pit, a development, or a recycle facility.

Minor Topographical Changes means recontouring which has a net result in less than a one-foot change above or below existing grade.

Myakka River (or River) Area means the corridor of land beneath and surrounding the Myakka River from river mile 7.5 to river mile 41.5, together with a corridor of land including the maximum upland extent of wetlands vegetation as determined by the Department of Environmental Protection pursuant to Chapter 403, Florida Statutes and Chapters 62-340, Florida Administrative Code.

Myakka River (or River) Protection Zone or Area means the same as the "wild and scenic protection zone".

Off-Site means adjacent or neighboring properties, public or private rights-of-way or easements, conservation areas, preservation areas, or common areas.

Ordinance Administrator means the Sarasota County Administrator, or an administrative official of Sarasota County Government designated by the County Administrator to administer and enforce the provisions of this Ordinance.

Particulate Matter means, with respect to emissions, all finely divided solid or liquid material, other than uncombined water, emitted to the atmosphere.

Permit is the legal authorization to remove fill from a site or to conduct or engage in filling, stockpiling, creating berms, or excavating unless exempted by the provisions of this article.

- (1) *General Permit* is the legal authorization to conduct or engage in filling, stockpiling, creating berms, or excavating more than 100 cubic yards and up to 2,000 cubic yards of Type A Fill unless exempted under the provisions of Section 54-349(a) or (b).
- (2) *Level I Permit* is the legal authorization to conduct or engage in filling, stockpiling, or excavating more than 2,000 and up to 10,000 cubic yards of Type A Fill in accordance with the provisions of this article.
- (3) *Level II Permit* is the legal authorization to conduct or engage in filling, stockpiling, or excavating more than 10,000 and up to 100,000 cubic yards of Type A Fill or up to 50,000 cubic yards of Type B or C Fill in accordance with the provisions of this article.
- (4) *Level III Permit* is the legal authorization to conduct or engage in filling, hauling, stockpiling, or excavating more than 100,000 cubic yards of Type A Fill or more than 50,000 cubic yards of Type B or C Fill in accordance with the provisions of this article.
- (5) *After-the-Fact Permit* is the legal authorization to continue an activity regulated by this article that commenced prior to applying for or receiving a General, Level I, II, or III Permit in accordance with the provisions of this article.
- (6) *Conceptual Permit* means a permit approved by the Board and issued by the Ordinance Administrator which approves the concept of a Master Plan for earthmoving activities involving more than 100,000 cubic yards of Type A Fill or more than 50,000 cubic yards of Type B or C Fill.

Permittee includes individuals, firms, partnerships, corporations, associations, organizations, trusts, companies, or any other legal entities that have received a permit.

Person includes individuals, firms, partnerships, corporations, associations, organizations, trusts, companies, or any other legal entities.

Protected Native Habitat means those habitats qualifying for preservation or conservation under the principles of the Apoxsee Environment chapter (section entitled "Principles for Evaluating Development Proposals in Native Habitats").

Reclamation means measures to clean up and close an earthmoving operation, including reshaping, grading, seeding, site stabilizing, revegetating, and creating mitigation areas and littoral zones.

Recyclable Construction and Demolition Debris is a component of Type D Fill and means construction and demolition debris from commercial users which is capable of being recycled, including wood pallets, wood construction materials, scrap metal, and brick which can be effectively processed for recycling.

Recycle Facility means any facility which recycles solid waste.

Recycling means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, processed, and reused or returned to use in the form of raw materials or products.

Routine Maintenance means earthmoving activities to an existing water body or infrastructure intended to restore the original dimensions or elevations. Evidence of original dimensions may include previous County authorizations, permits, or other acceptable documentation, or a demonstration by the applicant that the proposed earthmoving activities (including any minor topographical changes) would not adversely impact the drainage and wetland hydroperiod.

Site means the boundaries of a property, or portion thereof, upon which earthmoving has occurred, is proposed, or has been permitted. Any portion of a property which has a separate, valid construction plan approval, building permit, or earthmoving permit shall constitute a separate site.

Stipulation is a statement or condition issued with a permit with which compliance is necessary for continued validity of the permit.

Stockpile means the temporary collection, accumulation, or storage of Type A, B, C, or D Fill upon a parcel of land for a minimum period of 24 hours.

Subdivision Technical Manual means that section of the Land Development Regulations containing the technical specifications for a floodplain compensation plan.

Swale means a manmade stormwater conveyance with gradual side slopes and vegetation for soil stabilization, stormwater treatment, and uptake.

Type A Fill means earthen material essentially free of roots and other vegetative debris.

Type B Fill consists of concrete, rocks, broken asphalt, and other similar type inorganic and nonmetallic materials.

Type C Fill consists of vegetative land-clearing debris with associated earthen material.

Type D Fill consists of all other refuse not defined as Type A, B, or C Fill, including but not limited to construction and/or demolition debris and garbage.

Type A Fills consist of compacted Type A Fill.

Type B and C Fills consist of Type B or C Fill with a minimum cover of one foot of Type A Fill.

Type D Landfills consist in whole or in part of all materials not defined above as Type A, B, or C Fill.

Unconfined Emissions means emissions which escape and become airborne from unenclosed operations or which are emitted into the atmosphere without being conducted through a stack.

Wetland Hydroperiod Maintenance Plan means a method of maintaining the frequency of water flow and water levels of a wetland prior to and following permitted earthmoving activities.

Wetland or Wetlands means those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, sloughs, marshes, wet prairies, bayheads, bogs, cypress domes and strands, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps, and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

Wild and Scenic Protection Zone means an upland buffer that extends 220 feet on each side of the Myakka River wild and scenic designated river area (from river mile 7.5 to river mile 41.5) measured from the landward edge of the river area.

Yard Trash means vegetative matter resulting from landscaping maintenance including such materials as tree and shrub trimmings, grass clippings, and palm fronds.

Sec. 54-343. Applicability and interpretation of article.

- (a) The provisions of this article shall apply within the unincorporated areas of Sarasota County.
- (b) Where any provision of this article refers to another provision, ordinance, statute, regulation, or other authority, it refers to the most current version, incorporating any amendments thereto or redesignation thereof. Where any provision of this article refers to a local ordinance, board, or official, it shall refer to the appropriate County ordinance, board, or official, and not to any municipal one, except pursuant to the provisions of an interlocal agreement.
- (c) The Board may provide for the enforcement of this Ordinance within any municipality through an interlocal agreement.

Sec. 54-344. Permits or other authorizations required.

Unless exempted or authorized under the provisions of Section 54-349(a), (b) or (c), no person shall create or alter any excavation, nor apply fill to a site, whether it alters the existing contours or not, nor remove fill from any site, without first obtaining a permit or other authorization in accordance with the provisions of this article and the Comprehensive Plan. Exceptions to this requirement shall be made for activities exempted under the provisions of Sections 54-349(a) and 54-349(b) of this Code, however, said activities shall be consistent with the Comprehensive Plan and Section 54-344(4) of this Code. Issues of Zoning relative to stockpiling, excavation, filling, or hauling within annexed municipal lands shall be deferred to the municipality.

- (1) Stockpiling. No person shall stockpile or cause to be stockpiled Type A, B, C Fill, or recyclable construction and demolition debris (a component of Type D Fill) upon a parcel of land which was not the site of origination without first obtaining a permit in accordance with the provisions of this article. Stockpiling of Type B, C, or recyclable Type D fill generated from off-site sources shall be in compliance with the County's Zoning Code (Appendix A) of the Sarasota County Code regarding on-site recycle facilities. Stockpiling of Type B, C, or D Fill may occur at the site of origination provided that such activities do not conflict with other Federal, State, or local regulations or ordinances and provided that such stockpiling ceases within six months after it commences, unless otherwise authorized by a permit or other authorization in accordance with the provisions of this article. Transporting and stockpiling of yard trash is governed under Chapter 6, Article III of the Sarasota County Code.
- (2) Burying. No person shall bury Type D Fill, including yard trash. No person shall bury Type B or C Fill without first obtaining a permit in accordance with the provisions of this article. This section does not include County-operated landfills.
- (3) Wetlands impacts.
 - a. Except as otherwise authorized herein, or by other ordinance of Sarasota County, wetlands shall not be altered, filled, drained, dredged, scraped, or converted to lakes or borrow pits.
 - b. In cases where the Ordinance 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 Ordinance Administrator that no reasonable alternative exists other than disrupting a wetland, certain alterations may be allowed.
 - c. All alterations in wetlands must be mitigated in accordance with either Level I or Level II ratios 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 ratios shall be as follows:

1. One-to-one for herbaceous wetlands and two-to-one for wooded wetlands in accordance with Level I performance standards; or
 2. Two-to-one for herbaceous wetlands and four-to-one for wooded wetlands in accordance with Level II performance standards.
- d. In cases where mitigation is required, mitigation and monitoring plans must be submitted to and approved by the Ordinance Administrator before a permit will be issued.
- e. Flow of water within and through preserved wetlands shall not be impeded.
- f. Appropriate sediment control devices (hay bales, silt screens, or other devices approved by the Ordinance 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 Ordinance Administrator.

(4) The Myakka River Area and Myakka River Protection Zone.

- a. 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.
- b. 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(b)(1), 54-349(b)(2), 54-349(b)(3), 54-349(b)(4), 54-349(b)(5), 54-349(b)(6), 54-349(b)(7), 54-349(b)(9), 54-349(b)(10), 54-349(b)(11), 54-349(b)(12), 54-349(b)(14), 54-349(b)(15), 54-349(b)(16), 54-349(b)(17), 54-349(b)(19), 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 Ordinance 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.
- c. All earthmoving allowed under Section 54-344(4)(b), within the Myakka River Protection Zone, shall be consistent with the Vegetative Removal Standard contained within the County's Land Development Regulations.

d. 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 said authorization, or until cessation of the agricultural operation, provided no expansion or intensification of such authorized earthmoving occurs.

e. Upland buffers of native vegetation, of a minimum 30 feet width, shall be provided around preserved wetland areas. Where the upland vegetation surrounding any wetland contains mesic hammock habitat, the minimum buffer width shall be 50 feet.

Sec. 54-345. Requirements for obtaining permits and submitting annual reports.

(a) Persons applying for earthmoving permits (including General, Level I, Level II, Level III, or After-the-Fact Permits) shall submit the following to the office of the Ordinance Administrator. The appropriate type of permit is based on cumulative volumes over the life of the project in accordance with subsections (e) and (f) of this section.

(1) The original and four copies of a complete application, signed by the owner of the property or accompanied by a notarized written consent to do the work from the property owner if the application is made by any person or firm other than the owner of the property involved. This owner consent signature obligates the property owner(s) and successors to comply with all permit stipulations and all provisions of this article. The application shall include the following information and materials. With all applications include:

- a. Legal description and property identification number (PIN) of the site to be permitted;
- b. Street address of the site, if any, and a vicinity map showing location of the site in relation to nearby roadways;
- c. Three legible full section aerial photographs of the site (scale: one inch equals 200 feet or less) with the parcel boundaries clearly identified. Aerial photographs are available from the County's Surveying and Mapping Section and the County Property Appraiser's office, and must be the most recent available copies;
- d. Authorization for entry upon any portion of the site by County agents or employees for purposes of inspection for compliance with, and enforcement of, the provisions of this article;

- e. Area of proposed excavation, stockpile, and/or fill in acres or square feet;
 - f. Volume of excavation, stockpile, and/or fill in cubic yards;
 - g. Proposed source and type of material for fill;
 - h. Reason for excavating, stockpiling, and/or filling;
 - i. For excavation projects greater than one acre in size, a littoral zone plan, showing the proposed location(s) of the littoral zone(s) and a typical cross section, as well as demonstrating compliance with the applicable provisions of Section 54-347(7) and (8);
 - j. A wetland mitigation, monitoring, and maintenance plan, if wetland impacts are proposed, in accordance with the provisions of the Environmental Technical Manual of the County's Land Development Regulations;
 - k. A hydroperiod maintenance plan, if Wetlands are on-site, in accordance with the provisions of the Environmental Technical Manual of the County's Land Development Regulations;
 - l. Bonds in accordance with subsection (d) of this section, in a form acceptable and payable to the County, shall be required to ensure compliance with all the terms and stipulations of the permit and that all site stabilization and other actions required by this article are performed during and upon completion of the permitted activities; and
 - m. A nonrefundable fee to offset administrative, review and monitoring costs. The amount of said fee(s) shall be established by resolution by the Board and shall accompany all applications and reapplications.
- (2) The original and three copies of a site plan clearly showing the boundaries of the property, map scale and north arrow, and the following information:
- a. A site boundary and topographical survey clearly showing existing and proposed elevations, existing site features, easements and rights-of-way;
 - b. Proposed location(s) for excavation and/or disposition of material;

- c. Proposed slopes, setbacks, method of dewatering and on-site retention for excavation projects;
 - d. Location of wetlands, if any, and other native habitats;
 - e. Septic tanks and drainfields within 100 feet of the edge of any excavation;
 - f. Proposed method(s) to control erosion, including stabilization of excavated side slopes, filled and stockpiled areas;
 - g. On-site and adjacent off-site stormwater flow patterns for existing and proposed conditions;
 - h. For proposed fills or stockpiles within 100-year floodplains only, a compensation plan to demonstrate no net encroachment into the floodplain, in accordance with the Subdivision Technical Manual;
 - i. For projects that occur in areas with known historic resources or in areas with a moderate to high probability for the presence of historic resources based upon review of the County's historical resources database or other information available, a site assessment survey may be required by Sarasota County Historical Resources, in accordance with Chapter 66, Article III of the Sarasota County Code; and
 - j. For projects that occur upon properties which contain any portion of the Myakka River Area or the Myakka River Protection Zone, the plans must accurately depict the River Area, the protection zone, the jurisdictional limits of wetlands as verified by the appropriate State agency, County-required minimum upland buffers; and
 - j-k. Any other information requested by the Board or Ordinance Administrator to assist in their review of the project.
- (3) With all Level II and Level III applications, the following additional information shall be submitted:
- a. The site plan (scale: one inch equals 200 feet or less) shall be prepared, signed, and scaled by a Florida registered engineer. For Level III Permits, an 8½ - by 11-inch reproducible copy (~~not to scale~~) shall be submitted for inclusion into the Board packets;
 - b. Identification of a designated haul route, if applicable;

- c. Evidence of existing road conditions along a designated haul route, if applicable, including photographs or videotape;
 - d. Destination(s) of material to be transported for all fill removal (haul) applications;
 - e. Test borings (to a minimum depth of 20 feet) showing the seasonal high-water table and type of materials to the depth of any proposed excavation;
 - f. All water wells within 500 feet of the edge of any proposed excavation;
 - g. Area of groundwater drawdown (for excavations where dewatering may occur within 200 feet of a wetland for a period greater than 30 days);
 - h. A preliminary Closure Plan and Reclamation cost breakdown certified by a Florida registered engineer; and
 - i. A demonstration of compliance with any Master Plan approved as part of a Conceptual Permit approval (Level III applications only).
- (4) 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. Persons applying for Conceptual Permits must submit the original and four copies of a complete application including:
- a. A Master Plan;
 - b. Legal description and property identification number (PIN) of the site to be permitted;
 - c. Vicinity map showing the location of the site in relation to nearby roadways;
 - d. Three legible full section aerial photographs of the site (scale: one inch equals 200 feet or less) with the parcel boundaries clearly identified. Aerial photographs are available from the County's Surveying and Mapping Section and the County Property Appraiser's office, and must be the most recent available copies;
 - e. Authorization for entry upon any portion of the site by County agents or employees for purposes of inspection;

- f. Area of proposed excavation, stockpile, and/or fill in acres or square feet;
- g. Volume of excavation, stockpile, and/or fill in cubic yards;
- h. Proposed disposition of material and reason for excavating, stockpiling, and/or filling;
- i. Location of wetlands, if any, and other native habitats;
- j. Evidence of existing road conditions along a designated haul route, if applicable;
- k. Any other information requested by the Board or Ordinance Administrator to assist in their review of the project; and
- l. A nonrefundable fee to offset administrative, review and monitoring costs. The amount of said fee(s) shall be established by resolution by the Board and shall accompany all applications and reapplications.

A Conceptual Permit allows the Permittee to apply for a Level III Permit(s) which may be issued by the Ordinance Administrator without an additional public hearing in accordance with the ordinance provisions in effect at the time of Conceptual Permit approval.

- (5) Prior to submitting a permit application (including for a Conceptual Permit), applicants proposing to excavate or haul more than 100,000 cubic yards of Type A Fill or more than 50,000 cubic yards of Type B or C Fill shall schedule and attend a pre-application conference with the County's Traffic Operations staff to ~~Staff will~~ determine whether a traffic analysis must be provided by the applicant and the level of detail needed. In addition, staff will determine whether a traffic analysis must be provided by the applicant if a Level III Permit application is submitted after a Conceptual Permit is issued. A permit ~~will~~ shall not be issued until said analysis, if required, is approved by Traffic Operations staff.
- (6) If trees are to be removed as part of the ~~applicant's~~ proposed earthmoving activity, a tree removal and protection permit ~~may~~ shall be required by the County. The applicant has the option of combining this tree permit with the earthmoving permit. In this event, a combined permit fee shall be submitted by the applicant (as established in the fee resolution adopted for this article), and all provisions of Chapter 54, Article XVIII of the Sarasota County Code shall apply.

(b) Persons preparing annual reports for Level III Earthmoving Permits shall submit the following to the office of the Ordinance Administrator:

(1) The original and three copies of a complete application shall include the following information and materials:

- a. Three legible full section aerial photographs of the site with the parcel boundaries clearly identified, only if a more recent version has become available since the last submittal on file with Resource Protection Services. Aerial photographs are available from the County's Surveying and Mapping Section and the County Property Appraiser's office, and must be the most recent available copies;
- b. The current limits of the permitted earthmoving activities and the proposed limits for the coming permit year shown on the County-approved Master Plan, including the distances between required preserved native habitats and current and proposed excavation limits;
- c. Estimates of in place earthmoving volumes during each of the previous permit years and an estimate for the coming permit year;
- d. A report with sufficient detail to demonstrate that the applicant has complied with all applicable ordinance regulations and permit conditions;
- e. Any other information requested by the Board or Ordinance Administrator to assist in their review of specific compliance concerns; and
- f. A nonrefundable fee to offset administrative, review and monitoring costs. The amount of said fee(s) shall be established by resolution by the Board and shall accompany all annual report applications.

(c) Whenever a public hearing is required (see subsections (f) and (j) of this section, Section 54-350 and Section 54-352(b)), the applicant shall provide:

- (1) A list of names and mailing addresses of all property owners within 300 feet of the boundary line of the property and less than one-half mile from the boundaries of the Earthmoving activity (excavation or fill) for which an earthmoving permit or annual report review is requested. If any dwelling unit within the required notification area is within a property owners' association, the property owners' association also shall be notified. In addition, a list of names and mailing addresses of all property owners abutting the haul route (outside any public right-of-way) used to gain

access to a collector or higher classification road shall be provided. Property owners abutting the quadrants of any intersection of a haul route accessing onto a roadway under Federal or State jurisdiction also shall be notified. If the earthmoving site is located on a collector or higher classification road under the County's jurisdiction, then a list shall be provided of names and mailing addresses of all property owners abutting 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. The County may extend the area in which names and mailing addresses of property owners must be provided to one-half mile from the perimeter of the site. In addition, the required list shall include the owner of the subject property if not the same as the permittee. The required list shall be based on the most recent data available at the County Property Appraiser's office.

- (2) A nonrefundable mailing fee equal to the current Postal Service rate for first class mail multiplied by the number of persons listed in subsection (c)(1) of this section.
 - (3) A nonrefundable fee to cover the cost of advertising for a public hearing. The County shall provide the applicant with an invoice showing the actual cost of publication. The fee shall be remitted prior to the date of public hearing. No permit 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 or variance has been given by publication of a notice of the hearing in a newspaper of general circulation in the County, at least ten days in advance of the public hearing.
- (d) Performance and Reclamation bonds shall be provided by the owner or designated assignee of property upon which earthmoving is proposed. Said bonds, in a form acceptable and payable to the County, shall be required as hereinafter described, to ensure compliance with all the terms and stipulations of the permit and that all site stabilization and other actions required by this article and within any approved Closure Plan meeting the requirements of subsection (j)(10) of this section are performed during and upon completion of the permitted activities.
- (1) For a General Permit, no performance bond is required.
 - (2) For a Level I Permit, a minimum performance bond of \$500.00 shall be required. Alternatively, a contractor may post a \$2,000.00 bond to cover up to six active and concurrent Level I Earthmoving projects.
 - (3) For a Level II or III Permit, a Reclamation bond shall be required.
 - a. Said bond shall total 120 percent of the amount necessary to complete each component of reclamation specified within an

approved Closure Plan meeting the requirements of Sections 54-344(3)c, 54-344(3)d, 54-345(j)(10), 54-347(3), 54-347(6), 54-347(7), 54-347(8), 54-347(9), 54-348(a)(4), 54-348(a)(5), and 54-352(a) as certified by an engineer registered in the State of Florida. The total bond shall be itemized according to the respective reclamation measure, including any earthmoving associated with up-front mitigation.

- b. The County will accept a bond held by another governmental entity if said bond covers activities referenced in this section. Said bond shall grant to the County the authority to recover the bond in accordance with Section 54-351, and [shall provide] that prior agreement from the County is required for reimbursement to the permittee.
- (4) For a Level III Permit, a roadway performance bond shall be required whenever more than 100,000 cubic yards of Type A Fill is removed from the site, or hauling more than 50,000 cubic yards of Type B or C Fill using a designated haul route. Said assurance shall be provided to mitigate impacts pursuant to subsection (d)(6) of this section. One of the following two alternatives shall be selected by the applicant:
- a. Fifty thousand dollars per mile along the haul route. This amount may be applied as determined necessary by the County to effect repair of any damage to the haul route arising, in the sole determination of the County, from hauling activities performed under the permit; or
 - b. Contribution of a specified amount per cubic yard of material to be hauled from the site, for establishment of a roadway fund, from which monies may be drawn at the sole discretion of the County to mitigate the impacts on the designated haul route; provided, however, that the permit shall establish a maximum limit for said fund, which shall not exceed an amount reasonably necessary to mitigate such impacts, and no further contributions shall be due, unless and until monies are withdrawn from the fund by the County, leaving the fund balance less than the specified maximum limit. Said fund shall accrue interest at a rate comparable to other escrow accounts maintained by the County. Upon expiration of the permit, and fulfillment of the permittee's responsibilities thereunder, any remaining fund balance shall be refunded to the permittee.
- (5) Bonds, or portions thereof, shall remain in effect until the project or closure of an earthmoving operation is successfully completed in accordance with the requirements herein.

- a. Partial release or reduction of a Reclamation bond can be requested upon County acceptance of completed reclamation measure(s). The portion of the bond held for any mitigation or littoral zone project shall be returned to the permittee if deemed successful by the Ordinance Administrator based on criteria provided in the Environmental Technical Manual. The portion of the bond set aside to guarantee success of any mitigation area or littoral zone shall extend beyond permit expiration, until such time as the area is deemed successful by the Ordinance Administrator.
- b. All bonds shall be required prior to issuance of the permit, unless the permittee demonstrates that timing for permitted impacts (e.g., wetland removal) or other stipulated improvements (e.g., roadway improvements) will be delayed as accepted by the County. The permittee shall provide a written request to the Ordinance Administrator to postpone bonding these activities. If postponement is authorized by the Ordinance Administrator, the permittee shall provide an adequate bond amount as certified by an engineer registered in the State of Florida, prior to or concurrent with commencement of the bonded activity.
- c. Additional bonds or bond amounts may be required upon a determination by the Board that road and/or other damage, the cost to repair of which is estimated to exceed the specified bonding requirement, may be reasonably expected by the County to occur.

(6) Roadway impacts and mitigation.

- a. It shall be the responsibility of the permittee to mitigate those impacts on the haul route arising from activities authorized under the permit. Required mitigation measures shall be determined by the County on a case-by-case basis, and may include any or all of the following:
 - 1. Cleanup of materials over spills;
 - 2. Shoulder grading;
 - 3. Pavement patching;
 - 4. Pavement reconstruction;
 - 5. Pavement maintenance, including resurfacing;

6. Traffic safety improvements such as signing, striping, barrier rails, turn and/or acceleration lanes with tapers, all meeting AASHTO standards; and
 7. Watering and other dust control measures.
- b. Hauling operations shall comply with all applicable limits and restrictions, including those pertaining to vehicle registration, safety, and wheel and axle loads. Operations authorized by a permit issued hereunder may be suspended or prohibited by the Ordinance Administrator, upon a determination that any such operations are not in compliance with the provisions of the permit and/or any other applicable regulations.
 - c. Hauling operations shall not generate dust at levels that create, in the sole determination of the County, a nuisance to adjacent property owners along unpaved roads. Permits for new excavations shall not be issued to haul 10,000 cubic yards or more of material on unpaved roads adjacent to residentially developed areas.
- (e) The Ordinance Administrator shall issue General, Level I, Level II, or After-the-Fact General, Levels I and II Permits (whichever is applicable) for excavations, stockpiles, and fills of up to 100,000 cubic yards of Type A Fill and up to 50,000 cubic yards of Type B or C Fill without the approval of the Board if the applicant meets all applicable requirements set forth in this article.
 - (f) After approval by the Board, the Ordinance Administrator shall issue Level III Permits (or Conceptual Permits, as applicable) for all fills, hauls, stockpiles, and/or 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. Said 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. Notwithstanding any other provision herein contained, failure to provide written notice to all property owners described in subsection (c)(1) of this section shall not constitute a jurisdictional defect provided legal notice has been published.
 - (g) Permits shall be issued if the Board or Ordinance 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 does not adversely affect the implementation of any regional stormwater basin plan approved by the Board;
 - (3) The applicant has fully complied with all transportation and engineering requirements of this article, and requirements of Air and Water Quality Protection, pursuant to Chapter 54, Articles VI and VII of the Sarasota County Code, Resource Protection Services pursuant to Chapter 54, Article XVIII of the Sarasota County Code, regarding tree protection, and the Sarasota County Comprehensive Plan, Environment chapter, Ordinance No. 89-18 (including policies and principles regarding native habitats, the State wild and scenic designation of the Myakka River, and consultation with regulatory agencies regarding listed species), and pursuant to Chapter 54, Article XX of the Sarasota County Code, regarding coastal dredge and fill; the County's Zoning Division pursuant to the Zoning Code (Appendix A of the Sarasota County Code); Sarasota County's ~~Historical Resources~~ Historical Resources Center pursuant to the Sarasota County Comprehensive Plan, Historic Preservation Chapter, Ordinance No. 89-18, and Chapter 66, Article III of the Sarasota County Code regarding historic resources; the County's Land Development Services pursuant to stormwater regulations contained within Chapter 74 of the Sarasota County Code, and any other applicable ordinances, codes, regulations, and administrative guidelines that may be adopted;
 - (4) The earthmoving operation will not adversely affect groundwater levels or cause adverse environmental impacts;
 - (5) The proposed activity will not generate dust, noise, vibration or traffic at levels that create, in the sole determination of the County, nuisances to adjacent property owners; and
 - (6) The applicant has met all applicable requirements set forth by this article.
- (h) All General Permits involving up to 2,000 cubic yards of Type A Fill and Level I Permits involving up to 10,000 cubic yards of Type A Fill issued under the terms of this article shall be valid for a period not to exceed one year 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 Ordinance Administrator. Any request for a temporary extension shall be submitted to the Ordinance Administrator at least 30 days in advance of the permit expiration date. Said 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.
- (i) All Level II Permits involving up to 100,000 cubic yards of Type A Fill and up to 50,000 cubic yards of Type B or C Fill 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 Ordinance Administrator. Any request for a temporary extension shall be submitted to the Ordinance Administrator at least 30 days in advance of the permit expiration date. Said 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.

- (j) All Level III and Conceptual Permits shall be subject to the following:
- (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 Ordinance Administrator at least 45 days in advance of the permit expiration date. The Ordinance 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 Ordinance Administrator.
 - (3) Each year, 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 Ordinance Administrator shall determine whether all applicable conditions have been met. If all applicable conditions have been met, the Ordinance Administrator shall accept the annual report, unless a written petition is filed and acted upon as described in subsections (j)(4), (j)(5) and (j)(6) of this section within 30 days prior to the anniversary date of the permit.
 - (4) Petitioners shall provide a form or a letter to the Ordinance Administrator containing the following information:
 - a. The name, address, and telephone number of the petitioner;
 - b. A statement of how the petitioner's substantial interests are affected by the permittee's facility and/or operation; and

c. A statement of the relief/remedy sought by the petitioner.

- (5) If the petitioner is not satisfied with any reasonable resolution efforts on the part of the Ordinance Administrator or the permittee, and the petition is not voluntarily withdrawn by the petitioner, the Board will determine whether a public hearing shall be held.
- (6) If the Board decides not to hold a public hearing, the annual report shall be accepted. If the Board decides to hold a public hearing, notice shall occur in accordance with subsection (c) of this section.
- (7) The Ordinance 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 Ordinance Administrator. The request shall not exceed 25 percent of the volume or acreage projected for excavation given in the previous annual report.
- (8) The Ordinance Administrator may allow a delay in the submittal of an annual report in accordance with subsection (j)(3) of this section if the permittee provides written evidence that the earthmoving operation has been inactive for the entire past permit year.
- (9) At any time, the Ordinance Administrator or the Board may initiate proper and timely code enforcement action for any compliance issue in accordance with Sections 54-351, 54-353, and 54-354, regardless of the timing of annual report submittal.
- (10) 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 Ordinance Administrator at least 90 days prior to the expiration date of the existing earthmoving Permit. The Ordinance 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. Final action by the Board shall supersede any temporary extension granted by the Ordinance Administrator. If the permittee instead chooses the former option, a Closure Plan meeting the requirements of subsection (j)(11) of this section shall be submitted with the appropriate annual report. The Closure Plan shall be subject to review and approval by the Ordinance Administrator and may be reviewed and processed concurrently with an

annual report. A permittee may appeal any determination of the Ordinance Administrator to the Board of County Commissioners. This requirement applies to all permits issued after April 4, 1990.

- (11) All Permittees shall execute a closure procedure in accordance with a County-approved Closure Plan as specified under subsection (j)(10) of this section. The Closure Plan shall demonstrate compliance with the requirements of this article, including the specifications identified in Sections 54-345(d)(3), 54-347(3), 54-347(6), 54-347(7), 54-347(8), 54-347(9), 54-348(a)(4), 54-348(5) and 54-352(a). 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 Sections 54-344(3)d, 54-347(7) and 54-347(8). Other than required monitoring and maintenance activities, no closure activities shall extend more than two years beyond permit expiration.
- (k) The Board or the Ordinance 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 Ordinance Administrator to the Board, which may approve, strike, or modify any condition, stipulation, or safeguard.
- (l) In cases where the project may impact listed species, the applicant shall consult with the appropriate State and Federal agencies regarding protection measures. Said consultation shall occur prior to issuance of the permit, in accordance with the provisions of this article.
- (m) 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.
- (n) All permits issued pursuant to this article shall be subject to the requirements of all applicable Federal, State and local laws and ordinances.
- (o) Any person applying for an After-the-Fact Permit shall be assessed a fee as established by resolution by the Board.

Sec. 54-346. Review period.

A determination by County reviewing agencies that the application is complete or incomplete will be provided to the Ordinance Administrator within approximately 15 working days following receipt of the application. County reviewing agencies include Resource Protection Services, Zoning, ~~Historical Resources Center~~, Land Development Services (or a duly authorized representative of those divisions), and any other agency as requested by the Ordinance 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 Level III 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 Ordinance 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 completeness within approximately ten working days. Once deemed complete by all reviewing agencies, applications will undergo a formal review, except a formal review will be included within a ten-day completeness review for General Permits. Recommendations to approve, deny or approve with conditions will be made to the Ordinance 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 Ordinance Administrator may be appealed by the applicant to the Board within 20 days of such decision. After a review of the record, the Board may affirm, reverse, or modify the decision of the Ordinance Administrator.

Sec. 54-347. Requirements for Excavations.

The following requirements apply to all excavations for which a permit is required pursuant to the provisions of this article:

- (1) Borrow pits, artificial lakes and other excavations designed to be left open upon completion shall be sufficiently graded to avoid flooding or erosion on any off-site property or public roads, and shall not be excavated within the following minimum setback areas (measured at top of bank of excavation):
 - a. Within 50 feet of abutting property lines for excavations less than 10,000 cubic yards. The setback requirements may be reduced with the approval of the Ordinance Administrator, where it is determined that sufficient buffering is otherwise provided between incompatible uses, and if the affected abutting property owner(s) signs an affidavit of no objection;
 - b. Within 100 feet of abutting property lines for excavations in excess of 10,000 cubic yards but less than 100,000 cubic yards in volume;

- c. Within 200 feet of abutting property lines for excavations in excess of 100,000 cubic yards of volume; or
 - d. Within 200 feet of a wetland where dewatering of an excavation in excess of 10,000 cubic yards will occur for a period greater than 30 days, unless otherwise authorized by the Ordinance Administrator or the Board. An applicant requesting a setback reduction is required to provide a groundwater drawdown analysis based on a methodology that is verifiable, reproducible and provides for monitoring to assess any hydroperiod impacts to the wetland due to dewatering activities.
- (2) Structural and vegetative buffers may be required as necessary to prevent adverse visual, noise, vibration, dust, and safety impacts between potentially incompatible land uses.
- a. Existing vegetation (excluding nuisance or exotic plant species) must remain in required setback areas, to the extent possible.
 - b. If existing vegetation is not sufficient to provide an adequate visual buffer, supplemental planting, berms, or berms with supplemental planting may be required.
- (3) All excavated areas shall have side slopes no steeper than one foot vertical drop for each four feet of horizontal distance to a minimum depth of two feet below normal water level (NWL). Below this depth, the side slopes shall be no steeper than one foot vertical drop for each two feet of horizontal distance. All excavated ditches and swales along roadways shall have side slopes no steeper than one foot vertical drop for each four feet of horizontal distance. The back slopes of these ditches and swales shall be no steeper than one foot vertical drop for each three feet of horizontal distance. These standards are intended to be minimal sloping requirements, providing for maximum permissible steepness of the side slopes. The applicant may opt to create more gradual side slopes for safety purposes. See subsections (7) and (8) of this section for additional sloping requirements.
- (4) The depth of an excavation shall not exceed 20 feet and shall not penetrate any rock strata or other aquiclude. However, at a public hearing, the Board may grant permission for excavation in excess of 20 feet in depth if the applicant demonstrates that the development and operation of the excavation will not adversely affect existing or created groundwater levels, water quality, or the property of others. In this case, the permit must contain a provision authorizing a specific depth to which excavation may occur below 20 feet.

- (5) All excavations shall be maintained so as to prevent the creation of sanitary or health nuisances or hazards including mosquitoes, vermin and the dumping of garbage, trash, hazardous waste, or other refuse.
- (6) Upon completion of the excavation or prior to expiration of the permit, the excavation shall be left in a free-form configuration. Square or rectangular designs are not permissible. The banks shall be grassed to prevent erosion and to ensure that the completed excavation will blend, so far as possible, with the surrounding landscape. Spoil piles or stockpiles of material shall be removed from or spread upon the site pursuant to permit stipulations. All site cleanup and stabilization activities shall be completed prior to the expiration of the permit.
- (7) Fifteen percent of the surface area of all new commercial borrow pit lakes not part of a Master Plan that was approved prior to April 4, 1990, and that will not qualify as exempt utilities after closure in accordance with Section 54-349(b)(1), shall contain littoral zones. The area of littoral zone required shall be based on the surface area of each borrow pit lake, including the area of littoral zone, measured at normal water level elevation. Littoral zone designs will be considered on a case-by-case basis, but shall be vegetated, maintained and monitored in accordance with the provisions of Sections A.2 through A.13 of the Environmental Technical Manual contained in the County's Land Development Regulations. They may be created along all or a portion of the shoreline, concentrated in one or more sections of each borrow pit lake, included in islands or peninsulas, or any combination of the above. Littoral zones may also be concentrated near the outfall of individual borrow pits or at the outfall of the most downstream pit in cases where borrow pits are hydrologically connected. The area of littoral zone required shall be based on the total surface area of all interconnected pits.

The Ordinance Administrator shall have the authority on a case-by-case basis to modify the littoral zone planting and percentage requirements for an excavation for which there will be a proven and consistent wide fluctuation in water levels in the borrow pit lake (greater than three feet fluctuation measured from normal water level), or if the areas surrounding the lake contain significant protected native habitat that will be impacted if the entire littoral zone is created as required. In these cases, the Ordinance Administrator may approve an equivalent or greater area of upland habitat conservation, wetland enhancement and/or restoration to satisfy the remaining littoral zone percentage requirement, provided that documentation is submitted assuring these areas will be preserved or conserved and managed in perpetuity in accordance with an approved resource management plan. In any event, no less than five percent littoral zone shall be provided.

- (8) Fifteen percent of the surface area of all other lakes shall contain littoral zones, except those created for stormwater management purposes. In cases where

existing borrow pits are connected to or otherwise made part of a stormwater management system, littoral zones may be installed downstream of the existing pit(s) between the pit's outfall and the point of off-site discharge. Stormwater detention lakes shall be regulated in accordance with the Environmental Technical Manual of the County's Land Development Regulations. Littoral zones in lakes greater than one acre shall be vegetated, maintained, and monitored as described in subsection (7) of this section. Littoral zones in lakes less than one acre need not be vegetated; however, vegetation that establishes naturally shall be maintained in the required littoral zones.

- (9) During and upon completion of excavation and prior to expiration of the permit, sediment shall be stabilized and erosion controlled. Sediment shall not be allowed to encroach into wetlands, watercourses, or adjacent properties.
- (10) Receiving waters shall not exceed a turbidity level of 29 nephelometric turbidity units (NTU's) above natural background.
- (11) If evidence of the existence of historic resources is discovered during earthmoving activities (e.g., shell middens, aboriginal or historic pottery), all work shall cease in the area of effect and the permittee or designee shall contact Sarasota County Historical Resources Center within two working days in accordance with Chapter 66, Article III of the Sarasota County Code. If any human skeletal remains or associated burial artifacts are discovered, all work in the area shall cease and the Permittee or designee shall contact the nearest law enforcement office and Sarasota County Historical Resources Center.
- (12) There shall be no unconfined emissions of particulate matter arising from earthmoving activities, beyond the boundary lines of the property for which an earthmoving permit has been issued, including any designated haul route, in accordance with F.A.C. 62-296.

Sec. 54-348. Requirements for fills, stockpiles and burying.

- (a)
 - (1) Type A Fills and Stockpiles shall be allowed in any zoning district without a separate earthmoving permit provided that a permit for construction has been issued.
 - (2) Type B and C Fills and Stockpiles shall be consistent with the County's Zoning Code and the provisions of this article. Burying Type B or C Fill requires a permit in accordance with the provisions of this article. No Type C Fill shall be placed at or below the groundwater elevation. All Type B or C Fill shall have a minimum cover of one foot of Type A Fill upon closure.

- (3) Type D material shall only be deposited in a landfill permitted to receive such material pursuant to F.S. Ch. 403, except that recyclable debris shall be deposited into a permitted recycle facility.
 - (4) Stockpiles of Types A, B or C Fill shall be stabilized and secured.
 - (5) During and upon completion of all filling and prior to expiration of the permit, sediment shall be stabilized and erosion controlled. Sediment shall not be allowed to encroach into wetlands, watercourses or adjacent properties.
 - (6) Receiving waters shall not exceed a turbidity level of 29 nephelometric turbidity units (NTU's) above natural background.
 - (7) If evidence of the existence of historic resources is discovered during earthmoving activities (e.g., shell middens, aboriginal or historic pottery), all work shall cease in the area of effect and the permittee or designee shall contact Sarasota County ~~Historical Resources~~ Center within two working days in accordance with Chapter 66, Article III of the Sarasota County Code. If any human skeletal remains or associated burial artifacts are discovered, all work in the area shall cease and the permittee or designee shall contact the nearest law enforcement office and Sarasota County ~~Historical Resources~~ Center.
 - (8) There shall be no unconfined emissions of particulate matter arising from earthmoving activities, beyond the boundary lines of the property for which an earthmoving permit has been issued, including any designated haul route, in accordance with F.A.C. 62-296.
- (b) Requirements for fill removal (haul) permits. A permit shall be required for the removal of more than 100,000 cubic yards of fill from construction sites. Construction Plan approval for the generating site and Construction Plan approval, building permit, Earthmoving Permit, or approved exemption pursuant to Section 54-349(a) and (b) for the receiving sites shall be a prerequisite for such a permit, in addition to the other applicable requirements of this article.

Sec. 54-349. [Exemptions]

- (a) Agricultural exemptions and reviews. Agricultural exemptions and reviews shall be subject to the following provisions:
 - (1) For the purpose of this article, earthmoving incidental to agricultural operations shall meet the following criteria in order to qualify for an agricultural exemption in accordance with the provisions under subsection (a)(2) of this section or agricultural review in accordance with subsection (a)(3) of this section:

- a. The excavation or fill is proposed on a parcel of land containing five or more contiguous acres under unified ownership and which is classified by the Sarasota County Property Appraiser as bona fide agricultural land under the agricultural assessment provisions of F.S. § 193.461;
- b. Type A Fill material is not sold; and
- c. The applicant adheres to conditions of the Natural Resources Conservation Service's policy for protection of wetlands for agricultural uses.

(2) The following are exempt from the requirements of this article provided that all applicable Federal, State and local permits and/or authorizations have been obtained:

- a. Earthmoving authorized under an existing valid surface water management permit or environmental resource permit from the Southwest Florida Water Management District (SWFWMD), or written documentation from SWFWMD that the project is exempt.
- b. Filling, stockpiling, or excavating less than 100 cubic yards of Type A Fill, provided no filling or excavating occurs within easements or rights-of-way and other lawful drainage and utility facilities, and [it] does not impact off-site drainage.
- c. Lawful drainage ditches and canals, including routine maintenance and culvert installations, provided that excess fill is stockpiled or removed from the site in accordance with the provisions of this article.
- d. Temporary excavations relating to the accessory use of land and designed to be filled upon completion, e.g., graves.
- e. Earthmoving consistent with the routine maintenance (e.g., sediment removal, side slope repairs) to existing permitted or authorized ponds, ditches, and canals, provided that any excess fill is removed from the site or authorized to remain on-site in accordance with the provisions of this article.
- f. Restoration of property to original grade with Type A Fill following removal of buried debris.
- g. Landscaping and gardening projects with Type A Fill, including soil amendments, mulching, and fencing, provided that the on-site

drainage patterns are not altered, and further provided no filling occurs within easements or rights-of-way and private drainage and utility facilities.

- (3) Unless exempted under the provisions of subsection (a)(2) of this section, persons proposing earthmoving activities incidental to agricultural operations shall not be required to obtain a permit in accordance with the provisions of this article, provided that the Agricultural Development Review Committee (which shall consist of the County's Land Development Services; the Sarasota County District Conservationist, United States Department of Agriculture Natural Resources Conservation Service; the Sarasota County Extension Director, Institute of Food and Agricultural Science, University of Florida; the Ordinance Administrator; and the Director of Sarasota County Historical Resources Center) reviews the plans as follows:
- a. The applicant shall submit to Development Services Business Center six copies of plans showing topographical modifications and the locations of proposed excavating, filling and stockpiling on a legible aerial photograph (scale: one inch equals 200 feet or less). One copy shall be forwarded by Development Services Business Center to the Southwest Florida Water Management District for notification purposes only. The Agricultural Development Review Committee shall review said plans within approximately ten working days.
 - b. Agricultural reviews granted for specific plan approvals shall remain valid indefinitely, unless otherwise provided herein.
 - c. The validity of an agricultural review shall terminate upon noncompliance with any of the provisions contained under subsections (a)(1)a through c of this section or if there is evidence that the land is being prepared for anticipation of development. Such evidence includes submittal of an application for a building permit for a non-agricultural use, a special exception, a rezone, a site and development plan, or a preliminary plan within six months following the date of an agricultural review approval from Sarasota County. Earthmoving activities that invalidate a previous agricultural review approval would require an Earthmoving Permit, an After-the-Fact Earthmoving Permit, or Construction Plan approval.
- (b) Non-agricultural exemptions from excavation, fill, stockpile, or removal (haul) requirements. The following are exempt from the requirements of this article provided that all applicable Federal, State, and local permits and/or authorizations have been obtained. For exemptions specified under subsections (b)(3), (12),

(13), (14), (15), and (18) of this section, the Ordinance Administrator may request information from the applicant, including evidence of prior approval by the appropriate agency(ies), to confirm that no impact(s) will occur to off-site drainage, protected native habitats, historic resources, the 100-year floodplain, or listed species. Any noncompliance with the following criteria would require the earthmoving activity to be authorized under an Earthmoving Permit, an After-the-Fact Earthmoving Permit, or Construction Plan approval:

- (1) The installation and maintenance of public and private utilities, specifically potable and nonpotable water distribution and storage, sanitary sewer and wastewater reuse storage and transmission facilities, gas, telephone, cable television, electrical systems, and associated appurtenances, provided any excess fill is removed from the site or authorized to remain on-site in accordance with the provisions of this article;
- (2) Filling and lot grading for the purpose of constructing foundations to support any building or structure, provided that a building permit has been issued by the County and that the extent of lot grading is consistent with the County's requirements. On-site excavations for the purposes of creating foundations or lot grading are not exempt, unless approved as part of a Construction Plan approval
- (3) Lawful Drainage Systems, including routine maintenance and culvert installations, provided that excess fill is removed from the site or authorized to remain on-site in accordance with the provisions of this article;
- (4) Temporary excavations relating to the accessory use of land and designed to be filled upon completion, e.g., graves, or septic tanks;
- (5) Excavation of swimming pools and lined landscape ponds, provided any excess fill is removed from the site or authorized to remain on-site in accordance with the provisions of this article;
- (6) Excavating, stockpiling, and filling (as applied to road and drainage construction) and earthmoving in conjunction with the development of land, including the platting of a subdivision, when excavated materials are not removed from the boundaries of the development and land clearing debris is not buried or mounded on-site, and the site has received Construction Plan approval or a plan for revised topography that has been approved by the Board or the Ordinance Administrator as applicable;
- (7) Governmental agencies in performance of their normal official duties, provided that advance written notification, including a copy of the plans, is given to the Ordinance Administrator for those projects that are not governed by the County's Land Development Regulations. The purpose of

this review is to ensure that government projects are consistent with the policies and principles of Apoxsee;

- (8) The removal of up to 100,000 cubic yards of Type A Fill, or up to 50,000 cubic yards of Type B or C Fill, from a construction site, hauled to another construction site(s), provided that the generating and receiving sites have received Construction Plan approval or an Earthmoving Permit, and provided further that advance notification is given in writing to the Ordinance Administrator;
- (9) Earthmoving consistent with the routine maintenance (e.g., sediment removal, side slope repairs) to existing permitted or authorized ponds, ditches, and canals, provided that any excess fill is removed from the site or authorized to remain on-site in accordance with the provisions of this article;
- (10) Earthmoving associated with emergency repair or restoration in order to protect an existing structure or private infrastructure from further damage (e.g., erosion control or temporary swales), provided original elevations are restored following passage of the emergency or a permit is obtained to retain the fill or excavation;
- (11) Restoration of property to original elevations with Type A Fill following removal of buried debris;
- (12) Landscaping and gardening projects with Type A Fill, including soil amendments, mulching, and fencing, provided that no filling occurs within State or County easements or rights-of-way, or private drainage and utility facilities;
- (13) Routine maintenance of golf courses, including minor changes in topography, provided that written documentation is provided to the Ordinance Administrator that the County-approved drainage and Wetland Hydroperiod Maintenance Plans will not be impacted;
- (14) The construction of driveways, including minor changes in topography;
- (15) Routine maintenance of driveways, private roadways, sidewalks, bikeways and pathways, including minor changes in topography;
- (16) Construction or routine maintenance of shoreline stabilization features provided that any other required permit has been obtained, including a permit from the Water and Navigation Control Authority (WNCA) (Chapter 54, Article XX of the Sarasota County);

- (17) Hauling spoils from a permitted dredging project to a County landfill or a County-approved construction site provided that advance notification is given to the County's Traffic Operations office and the Ordinance Administrator;
- (18) Filling with, stockpiling with, or excavating less than 100 cubic yards of Type A Fill on a property less than five acres and up to 500 cubic yards of Type A Fill on a property five acres or larger, provided no filling, stockpiling or excavating occurs within public easements or rights-of-way, and other lawful drainage systems and utility facilities. For parcels five acres or larger, written documentation shall be provided to the Ordinance Administrator demonstrating consistency with the above-referenced criteria and this subsection (b) and showing that no excavating would occur within 50 feet of property boundaries. The setback may be reduced if the affected abutting property owner(s) signs an affidavit of no objection;
- (19) Hauling of excess fill from governmental construction projects, including roadway and stormwater improvement projects, provided that any stockpiling or filling of privately owned lands occurs in accordance with the provisions of this article.

Sec. 54-350. Variances.

A public hearing is required for all variances, as provided in Section 54-345(c). 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. An applicant for a variance must provide a nonrefundable fee to offset administrative, review and monitoring costs. The amount of said fee(s) shall be established by resolution by the Board and shall accompany all applications and reapplications.

Sec. 54-351. Reservation of rights.

The Board may enact additional rules and regulations to implement and carry out the provisions of this article or revoke a permit for cause after a duly advertised public hearing. The permittee shall be financially responsible for all legal fees and associated costs incurred by Sarasota County in recovering bonds. Additionally, in the event of evidence of excessive damage, the permittee may:

- (1) Be required to post an additional bond for the estimated damages;
- (2) Be required to correct the damage immediately;

- (3) Have the permit suspended until satisfactory restitution is made; and
- (4) Be required to forfeit to the County existing performance and reclamation bonds in the event any component of reclamation or roadway mitigation is not satisfactorily completed in accordance with the approved Closure Plan and requirements herein.

Sec. 54-352. Exceptions and amendments.

- (a) **Exceptions.** The provisions of this article shall not be applicable to any excavations or fills now permitted except that some permittees shall be subject to the annual report and Closure Plan requirements provided in Section 54-345(j). Nothing in this article shall affect the boundaries and design (including littoral zone and mitigation plans) of excavations approved as part of a Master Plan for projects involving more than 10,000 cubic yards of material.
- (b) **Amendments to Level III and Conceptual Permits.** The Board retains the authority to amend previously issued and active Level III and Conceptual 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 Section 54-345(a)(1). The Board may grant such an amendment(s) after holding a public hearing following public notice in accordance with Section 54-345(c) and (f). 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.
- (c) **Amendments to other permits.** The Ordinance 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 level. Permit amendment requests shall be provided to the Ordinance Administrator prior to the amended work being initiated, and at least 45 days prior to the date of permit expiration.

Sec. 54-353. Administration.

The Ordinance 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 is authorized to adopt administrative rules and regulations to carry out the purpose and intent of this article. 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.

Cross reference(s)--Administration, Ch. 2.

Sec. 54-354. Enforcement and penalties.

Violation of any provision of this article shall be punishable pursuant to F.S. § 125.69. The provisions of this article may also be enforced pursuant to provisions of F.S. ch. 162, and any ordinances adopted thereunder. In addition, the provisions of this article may be enforced through code enforcement proceedings under the provisions of Chapter 2, Article VIII of the Sarasota County Code. Penalties collected as part of enforcement of this article shall be placed in the Sarasota County pollution recovery trust fund, as established in Resolution No. 91-360. Notwithstanding any other provisions of this article for enforcement or penalties, the Board may also enforce this article by actions at law or in equity for damages and injunctive relief, and, in the event the Board prevails in any such action, the Board shall be entitled to an award of its costs and reasonable attorneys' fees.

Sec. 54-355. 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. 54-356. Sunset Provision.

This article shall be automatically repealed on June 30, 2009~~11~~, unless otherwise amended or ratified by the Board of County Commissioners of Sarasota County, Florida.

Sec. 54-380. Reserved.

Section 3. Effective Date: This Ordinance shall take effect immediately upon receipt by the Office of the Secretary of State of Florida.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Sarasota
County, Florida, this 3rd day of, 2003.
December

ATTEST:

COMMISSIONERS

BOARD OF COUNTY

OF SARASOTA COUNTY, FLORIDA

By [Signature]
Chairman

KAREN E. RUSHING, Clerk of Circuit Court
and Ex-Officio Clerk of the
Board of County Commissioners of
Sarasota County, Florida
By: Paula J. Holtzman
Deputy Clerk

STATE OF FLORIDA
COUNTY OF SARASOTA
I HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE AND CORRECT COPY OF THE ORIGINAL FILED
IN THIS OFFICE WITNESS MY HAND AND OFFICIAL
SEAL THIS DATE: 12/27/05
KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT
EX-OFFICIO CLERK TO THE BOARD OF COUNTY
COMMISSIONERS, SARASOTA COUNTY, FLORIDA
BY [Signature]
DEPUTY CLERK

**APPENDIX G – Sarasota County Ordinance No. 2003-027, amending the
Tree Protection Ordinance No. 83-44**

BOARD RECORDS
FILED FOR RECORD

ORDINANCE NO. 2003-027

2003 NOV 19 PM 3:00

KARON E. BUSTIN
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

AN ORDINANCE OF SARASOTA COUNTY, FLORIDA, RELATING TO THE PROTECTION OF TREES; RESTATING AND AMENDING SARASOTA COUNTY ORDINANCE NO. 83-44, AS AMENDED, AS CODIFIED IN ARTICLE XVIII, OR CHAPTER 54 OF THE SARASOTA COUNTY CODE; AMENDING SECTION 54-581, RELATING TO FINDINGS OF FACT; AMENDING SECTION 54-582, RELATING TO DEFINITIONS; AMENDING SECTION 54-583, RELATING TO PUBLIC EDUCATION; AMENDING SECTION 54-584, RELATING TO PROHIBITIONS; AMENDING SECTION 54-585, RELATING TO EXEMPTIONS; AMENDING SECTION 54-586, RELATING TO GRAND TREE DESIGNATION; AMENDING SECTION 587, RELATING TO PERMITTING CRITERIA, PROCEDURES, AND FEES; AMENDING SECTION 54-588, RELATING TO TREE PROTECTION DURING THE DEVELOPMENT OF LAND; AMENDING SECTION 54-589, RELATING TO THE PROTECTION OF GRAND TREES; AMENDING SECTION 54-590, RELATING TO TREE PLANTING, RELOCATION, OR REPLACEMENT; AMENDING SECTION 54-591, RELATING TO EMERGENCY TREE REMOVAL; AMENDING SECTION 54-592, RELATING TO PENALTIES; AMENDING SECTION 54-593, RELATING TO THE WITHHOLDING OF PERMITS AND IMPOSITION OF STOP ORDERS; AMENDING SECTION 54-594, RELATING TO APPEALS; AMENDING SECTION 54-595, RELATING TO CIVIL AND ADMINISTRATIVE REMEDIES; AMENDING SECTION 54-596, RELATING TO TERRITORIAL APPLICABILITY; AMENDING SECTION 54-597, RELATING TO SEVERABILITY; AMENDING SECTION 54-598, RELATING TO INTERPRETATION; AMENDING SECTION 54-599, PROVIDING FOR A SUNSET PROVISION; PROVIDING FOR AN EFFECTIVE DATE.

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

Section 1. This Ordinance amends Sarasota County Ordinance No. 83-44, as amended, and as codified in Chapter 54, Article XVIII, of the Sarasota County Code. Language that has been added to the Code has been underscored, while language that has been eliminated has been ~~stricken~~.

Section 2. Chapter 54, Article XVIII, of the Sarasota County Code is hereby amended to read as follows:

Sec. 54-581. Findings of fact.

It is hereby found and determined that:

- (1) Trees are proven producers of oxygen, a necessary element for the survival of mankind;
- (2) Trees appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air;

- (3) Trees play an important role in the hydrologic cycle, transpiring considerable amounts of water each day, and they precipitate dust and other particulate airborne pollutants from the air;
- (4) Trees play an important role in cleansing stormwater runoff which passes from the surface [water] to groundwater;
- (5) Trees, through their root systems, stabilize the soil and play an important and effective part in County-wide soil conservation, erosion control and flood control;
- (6) Mangrove Trees are of special ecological value in stabilizing, building and protecting the shoreline, providing for spawning and breeding grounds for marine organisms and other wildlife, and serving as the basis for most of the estuarine food chains, which are critical to 70 to 90 percent of those species considered important from a recreational and/or commercial standpoint;
- (7) Trees are an invaluable physical and psychological addition to the County, making life more comfortable by providing shade and cooling both air and land, reducing noise levels and glare, and breaking the visual monotony of Development on the land;
- (8) Trees provide wildlife habitat and play other important ecological roles;
- (9) The protection of Trees within Sarasota County is not only desirable, but essential to the present and future health, safety and welfare of all the citizens of Sarasota County; and
- (10) Some Tree species are more beneficial than others as necessary contributors to the County's environment and it is not necessary to protect each and every species in order to attain the public benefit of a Tree protection and replacement ordinance.
- (11) 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 Apoxsee, the Sarasota County Comprehensive Plan.
- (12) Some trees on public and private lands are especially significant due to their character, size, and age.
- (13) Grand trees are an important component of Sarasota County's urban forest, and have a unique and intrinsic value to the general public because of their age, size, and ecological value.
- (14) Adoption of a program for the designation and preservation of grand trees within Sarasota County promotes the health, and economic well being of the residents and property owners of Sarasota County.
- (15) Ordinance No. 98-025 relating to protection measures for the Myakka River, requires the Tree Protection Code to be consistent with the provisions of the Myakka River Protection Plan, to minimize potential adverse physical and visual

impacts on resource values in the river area and to minimize adverse impacts on private landowners use of land for residential purposes.

Sec. 54-582. Definitions.

Administrator. The designated representative of the Sarasota County Administrator.

Agriculture. A commercial enterprise using lands classified by the County Property Appraiser under the agricultural assessment provisions of F.S. § 193.461 for the production and marketing of agricultural products.

Applicant. Any Person or his duly authorized representative who submits Development plans through any County agency for the purpose of obtaining approval thereof.

Board. The Board of County Commissioners of Sarasota County.

Clear Trunk. The height of the trunk of a palm Tree measured from the ground to the point where the lowest green frond is attached to the trunk.

Comprehensive Plan. The document "Apoxsee, the Revised and Updated Sarasota County Comprehensive Plan" (Apoxsee), adopted by the Board and filed with the Clerk of said Board pursuant to Sarasota County Ordinance No. 89-18.

Condition Classification. A rating of a plant based on its current structural integrity and state of health as defined by the "Guide for Plant Appraisal" latest edition, published by the International Society of Arboriculture.

County. Sarasota County, Florida.

Development. A subdivision of land or a site and Development as defined by the Land Development Regulations, a residential mobile home park, or any other construction, whether residential, commercial, industrial, office, professional, institutional, or recreational, except a one- or two-family dwelling on an individual Lot.

Diameter at Breast Height (DBH). The diameter of the trunk measured at breast height, which is 54 inches above the ground. When low branches or stems preclude measuring the trunk at 54 inches, the smallest circumference of the trunk below the lowest branch or stem juncture shall be the measure of DBH.

Drip Line. An imaginary vertical line running from the outermost branches or portion of the Tree crown to the ground.

Emergency. Any man-made or natural disaster which is specifically declared to be an Emergency through a resolution adopted by the Board.

Grand Tree. Any tree that has been determined by the Administrator to have the characteristics as outlined in Section 54-586 or any tree designated a Florida State

Champion, United States Champion, or World Champion by the American Forestry Association.

Land Development Regulations. Sarasota County Ordinance No. 81-12, as amended, or its successor (Chapter 74 of this Code).

Lot. Includes "tract" or "parcel" and means the least fractional part of subdivided lands having fixed limited boundaries and an assigned number, letter, or other name through which it may be identified.

Myakka River Area. The corridor of land beneath and surrounding the Myakka River from river mile 7.5 to river mile 41.5, contained in part III, Chapter 258, Florida Statutes, together with a corridor of land including the maximum upland extent of wetland vegetation as determined by the Department of Environmental Protection pursuant to Chapter 403, Florida Statutes and Chapter 62-340, Florida Administrative Code.

Myakka River Wild and Scenic Protection Zone. The upland buffer that extends 220 feet on each side of the Wild and Scenic segment of the Myakka River (from river mile 7.5 to river mile 41.5), measured from the landward edge of the Myakka River area.

Natural Regeneration. The regeneration of a stand of timber by leaving a minimum of 15 mature healthy trees per acre appropriately spaced to act as seed trees.

Person. Any individual, government, corporation, partnership, association, firm, trust, or other entity.

Remove a Tree. To relocate, cut down, poison, or in any other manner destroy, or cause to be destroyed, a Tree as defined in this article. It includes topping, or any action that causes irreparable injury to a tree, including damage inflicted on the root system by heavy machinery, changing the natural grade above the root system or the removal of sufficient canopy so as to cause the unnatural decline of the tree.

Silviculture. A commercial enterprise controlling the establishment, growth, composition, health, and quality of forests and woodlands of desired characteristics with the intent to produce, reproduce or manage a stand of pines (*Pinus* spp.) for the eventual sale to a timber company as a pulp, paper or other timber products. This includes site preparation activities, prescribed burning and harvesting of trees for sale.

Stipulation. A statement or a condition issued with a Permit or with an approved plan, with which compliance is necessary for continued validity of the Permit or other approval.

Topping. Internodal removal of woody branches containing heartwood or cutting back to a lateral branch too small to assume the terminal role, that removes canopy coverage by more than 30%.

Tree. A living, woody, self-supporting plant, which when mature will reach ten feet or more in height, having a main stem or cluster of main stems, and any one stem

measuring 4 1/2 inches DBH. For the purpose of this article, all rooted species of mangrove, including red mangrove (*Rhizophora mangle*), white mangrove (*Laguncularia racemosa*), black mangrove (*Avicennia germinans*), and buttonwood mangrove (*Conocarpus erecta*), are hereby declared to be Trees, and are hereby protected by the provisions of this article, regardless of size, except where State law supersedes local jurisdiction. In addition, all palms with more than 4 1/2 feet of Clear Trunk are declared to be Trees and are protected by the provisions of this article. It includes any tree planted, relocated or replaced pursuant to Section 54-590 of this Code.

Tree Location Survey. A one inch equals 200 feet or less scale drawing which provides the following information: location of all Trees, plotted by accurate techniques, common name of all Trees, and Diameter at Breast Height (DBH), printed on the proposed site plan as described in Section 54-585 587 (b)(1). A site plan printed on an aerial photograph may be substituted if it is approved by the Administrator prior to submittal and if it is a recent, legible aerial photograph that reflects existing site conditions (scale: one inch equals 200 feet or less).

Tree Removal and Protection Permit (Permit). The legal authorization to remove, transplant, and/or the requirement to protect Tree(s) on a Lot, pursuant to the provisions of this article.

Treed Area. The area within a 100-foot radius of any Tree trunk.

Sec. 54-583. Public Education:

The Administrator shall develop a process to identify Grand Trees and conduct a public relations and education program to recognize, promote, identify, and preserve Grand Trees within Sarasota County. This program shall provide the citizens of Sarasota County with the awareness

and technical assistance necessary to preserve Grand Trees within the County and shall notify the owner as identified on the current annual tax roll by regular U.S. mail.

Sec. 54-584. Prohibitions.

- (a) Unless exempt under Section 54-585, it shall constitute a violation of this article for any Person to Remove a Tree or Trees or cause a Tree or Trees to be removed, or to initiate Development, or construction or demolition of single- and two-family homes, when Trees exist on the property, except in accordance with a Tree Removal and Protection Permit issued by the Administrator pursuant to the provisions of this article.
- (b) It shall constitute a violation of this article for any Person to violate any provision or Stipulation contained in a site and development plan or preliminary subdivision plan approved pursuant to the Land Development Regulations and this article, or in a Permit issued pursuant to this article.

Sec. 54-585. Exemptions.

This article shall not apply to:

- (1) A Tree or Trees which has/have a DBH of less than 4 1/2 inches and any palm Tree with less than 4 1/2 feet of Clear Trunk (except mangrove species listed in the definition of "Tree" in Section 54-582, which are protected regardless of size).
- (2) Brazilian Pepper (*Schinus terebinthifolius*), Punk or Melaleuca (*Melaleuca quinquenervia*), Australian Pines (*Casuarina spp.*), Carrotwood (*Cupaniopsis anacardioides*), Chinaberry (*Melia azedarach*), Chinese Tallow (*Sapium sebiferum*), or any Tree species prohibited by the Invasive Plant Species Ordinance No. 90-01, as amended (Chapter 54, Article XIX, of this Code).
- (3) Governmental personnel or agencies in the performance of their official duties during an Emergency declared by the Board as provided herein.
- (4) A Lot or portion thereof that is classified by the County Property Appraiser as bona fide agricultural land under the agricultural assessment provisions of F.S. § 193.461, and where Tree removal is undertaken solely for agricultural or silvicultural purposes. This exemption shall not apply to any Tree removal in preparation for, or in anticipation of, any Development or any construction of non-agricultural improvements. For the purposes of this article, evidence of such preparation or anticipation includes submittal of an application for a building permit for non-agricultural use, a special exception, a rezone, a Development of Regional Impact, a site and development plan, a preliminary subdivision plan, a conceptual Development plan, or other Development approval. Other than for properties that are sold to settle an estate, submittal of plans listed in this section within six years of the date of Tree removal would invalidate this exemption and require an after-the-fact Permit and/or mitigation in accordance with Section 54-595. Neither this invalidation nor the six year time frame shall apply to bona fide agricultural or silvicultural operations. Nothing herein shall be construed to affect the right of any person engaged in the commercial enterprise of Agriculture or Silviculture to alter the topography of any tract of land for purposes consistent with the practice of such enterprise. Any stand of timber that is harvested in the Myakka River Protection Zone shall be regenerated either by replanting, natural regeneration or by leaving a sufficient number of young trees to replace the stand of timber.
- (5) Plant or Tree nurseries with regard to only those Trees grown on the premises, and specifically for sale to the general public in the ordinary course of such plant or Tree nurseries' businesses.
- (6) Tree removal on an owner-occupied residential Lot of five acres or smaller, after a certificate of occupancy has been issued for the residential dwelling(s) on that Lot. For owner-occupied residential Lots larger than five acres, Tree removal is exempted within 250 feet of the residential dwelling after the certificate of occupancy is issued for the residential dwelling(s) on that Lot. This exemption shall not apply in conservation or preservation areas, or to Trees planted or

relocated pursuant to a Tree Removal and Protection Permit, or where the residential dwelling is to be demolished and reconstructed. This exemption does not apply to any Grand Tree. This exemption shall not apply within the Myakka River Wild and Scenic Protection Zone, except on lots that are a minimum of 2,200 feet from the bank of the main stem of the Myakka River. On those lots, no permit is required for tree removal landward of the watercourse buffer.

- (7) Tree removal necessary for the construction of public roads, public utilities, public landfills, or public stormwater facilities. This exemption does not apply to any Grand Tree. This exemption shall not apply within the Myakka River Wild and Scenic Protection Zone.
- (8) Tree removal necessary for the maintenance of existing roads, utilities, or stormwater facilities within rights-of-way and easements, performed or contracted by a duly constituted communication, water, sewerage, stormwater, electrical, other utility or government entity. This exemption does not apply to any Grand Tree. This exemption shall not apply within the Myakka River Wild and Scenic Protection Zone.
- (9) The demolition of structures, where the demolition does not require the removal of any Trees.

Sec. 54-586. Grand Tree Designation:

The tree species and standards set forth in Schedule A and Schedule B shall provide the parameters for Grand Tree designation in Sarasota County. Additionally, all Grand Trees shall have a 70% or greater Condition Classification.

Schedule A

Species and Minimum Points Needed to be a Grand Tree

American Elm (<i>Ulmus americana</i>)	100
Bald Cypress (<i>Taxodium distichum</i>)	120
Hickory (<i>Carya spp.</i>)	110
Live Oak (<i>Quercus virginiana</i>)	110
Pine (<i>Pinus spp.</i>)	110
Redbay (<i>Persea borbonia</i>)	85
Sand Live Oak (<i>Quercus geminata</i>)	70
Southern Magnolia (<i>Magnolia grandiflora</i>)	80
Southern Red Cedar (<i>Juniperus silicicola</i>)	90
Sugarberry (<i>Celtis laevigata</i>)	95
Sweetbay (<i>Magnolia virginiana</i>)	90
Sweetgum (<i>Liquidambar styraciflua</i>)	100

Schedule B

Measurements

Trunk diameter (DBH)	one point per inch
Height to the nearest foot	one point per foot

Average canopy spread to the nearest foot
(measure the longest and shortest diameters of
the limb spread or drip line and divide by 2)

one point for each four foot

Sec. 54-587. Permitting criteria, procedures, and fees.

- (a) Criteria for granting Tree Removal and Protection Permits. It is the intent of this section that no Permit shall be granted for the removal of any Tree where the Applicant has failed to design and locate the proposed improvements to minimize the removal of Trees consistent with the permitted use of the property under the County Zoning Ordinance, Ordinance No. 75-38, as amended (Appendix A to this Code), or municipal zoning ordinance, if applicable. Subdivision plans, site and development plans, rezones and special exceptions first submitted after [date of adoption of this Ordinance] shall be designed to protect Grand Trees. Exceptions may only be made for safety reasons or if the Applicant can clearly show that setting aside the space necessary to protect a Grand Tree would unreasonably prevent the Development of a Lot. Tree Removal and Protection Permits, which must be consistent with the Environment chapter of the Comprehensive Plan relating to habitat protection, shall be issued only where:
- (1) The Trees pose a safety hazard to pedestrian or vehicular traffic or unmanageably threaten to cause disruption to utility services;
 - (2) The Trees pose a safety hazard to buildings, structures, or other improvements;
 - (3) The Trees completely prevent access to a Lot;
 - (4) The Trees unreasonably prevent Development of a Lot or the physical use thereof, or if State or local regulations require fill to the extent that Trees cannot be saved and the required elevations are certified by the project engineer.
 - (5) The Trees are diseased or are weakened by age, storm, fire, or other injury, or as a result of suppression by other Trees or vines, or site conditions, to the extent that they have lost most of their function and value, or pose a danger to Persons, property, improvements or other Trees, if so determined by the Administrator. It is the intent of this provision that no Permit shall be granted for the removal of any Tree if the hazard can be abated by any other reasonable means.
- (b) Procedure. If Trees exist on a Lot, regardless of whether they may be removed or protected, a Tree Removal and Protection Permit is required before any construction activity shall occur on that Lot. An application meeting the requirements of this article shall be submitted to the Administrator for review and recommendation, prior to or concurrent with the submission of preliminary subdivision plans or a site and development plan or an application for a building permit, whichever is first required. Where Development requires approval under the Land Development Regulations, said Tree Removal and Protection Permit shall not be issued until after the preliminary subdivision plan or site and development plan is approved. Any Person applying for a Permit to remove, protect or relocate a Tree shall file a written application and pay such fee as is established by the Board pursuant to subsection (c) of this section. The written

application shall constitute authorization for County staff to enter the Lot to conduct inspections to determine if the Applicant is in compliance with the provisions of this article. A Tree Location Survey for the Lot must be submitted with the application. The Tree Location Survey shall show the information required in subsections (b)(1)a through g of this section at a scale sufficient to enable the determination of matters required under these regulations:

(1) Information required on the Tree Location Survey.

- a. The shape and dimensions of the Lot, together with the existing and proposed locations of structures, utilities (i.e., power lines, water, sewer), and other improvements, if any.
- b. Locations of all existing Trees, identified by common or botanical name and DBH. Trees proposed to remain, to be transplanted, or to be removed shall be identified. Where clearing is occurring on part of a Lot only the trees in the area to be cleared and an additional 50 feet need to be located. Grand Trees shall be identified by DBH, height, the size of the dripline (in feet) and the proposed location of tree protection barricades. Groups of Trees in close proximity (five feet spacing or closer) may be designated as a "clump" of Trees, with the predominant species, estimated number and average size listed. Limited clearing may be necessary to provide proper preparation of the Tree Location Survey. However, this shall not be done in any fashion that is contrary to this article.
- c. If existing Trees are to be transplanted, the proposed relocation for such Trees, together with a statement as to how such Trees are to be protected during land clearing and construction and maintained after construction.
- d. A statement indicating how Trees not proposed for removal or relocation are to be protected during land clearing and construction (i.e., as provided by Section 54- 588 and Section 54-589).
- e. Locations and dimensions of all setbacks and easements required by the zoning code of the County.
- f. Statements as to grade changes proposed for the Lot and how such changes will affect Trees.
- g. Any proposed Tree replacement program.
- h. If a Grand Tree exists on a lot and the proposed activity will encroach into the dripline, a plan shall be submitted by a forester, certified arborist (with current credentials from the International Society of Arboriculture) or a Florida licensed landscape architect specifying the methods to be utilized to preserve the tree. This plan shall address the protection of the root system, crown and trunk of the tree and the means of supplying water and essential nutrients if applicable.

- i. The Administrator shall issue written conditions for work within the dripline of a Grand Tree only when a arboricultural plan has been approved.
- (2) Tree location on a developed Lot. If Tree removal is proposed on a Lot that is already developed and the Tree removal is not in anticipation of additional Development, the Applicant will be required to show only the location of the Tree(s) proposed for removal on the survey.
- (3) Alternate information. In the event that there are no Trees located on the site, the Applicant shall so state on the permit application for all new construction, additions, and demolitions. Such statement shall be substantiated by an inspection of the site or the review of a recent, legible aerial photograph that reflects existing site conditions, which shall be a binding determination that no Trees are presently on the site.
- (4) Pre-application inspection service. The Administrator shall be available for pre-application conferences or inspections of the site involved.
- (5) Upon receipt of a complete application, the Administrator will conduct a field inspection to determine if the information is sufficient for review, and if the proposed plan is in compliance with the provisions of this article. The review for single- and two-family Lots will be made within four working days of receiving a completed application. The review for other parcels will be made within seven working days of receiving a completed application. Upon completion of the review, the Administrator will notify the Applicant that the application is either insufficient, or does not comply with the provisions of this article, or that the Permit is approved, or approved with Stipulations.
- (6) Should an additional Tree or Trees need to be removed after a Tree Removal and Protection Permit has been issued, the Applicant must obtain an amended Permit prior to the removal of said Trees.
- (7) If a Tree dies after a Tree Removal and Protection Permit has been issued and prior to the issuance of a certificate of occupancy, the Applicant shall notify the Administrator and request an inspection, prior to the removal of the dead Tree(s). An inspection will be made within two days of notification by the Applicant. Failure to notify the Administrator prior to the removal of any dead Tree constitutes a violation of this article.
- (8) All Permits will require a final inspection to ensure compliance with the provisions of this article. Final inspections shall be scheduled by the Applicant after the final grade is complete. Final inspections will be completed within three working days after notification by the Applicant.
- (c) Permit fees. The Board 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 Tree protection related activities. Any Person who commences Development, or construction or demolition of

single- and two-family homes, without first obtaining a Permit, shall be required to obtain an after-the-fact Permit and/or mitigate the impact in accordance with Section 54-595. Said payment shall not preclude nor be deemed a substitute for prosecution of violations of the provisions of this article.

Sec. 54-588. Tree protection during the Development of land.

(a) Prior to and during land clearing, the owner, developer or agent shall clearly mark (with red flagging) all Trees proposed to be removed and shall erect barricades around all Trees to be protected. The barricades must remain in place and be in good condition throughout construction. Barricades may be removed for the final grading. Removal of other vegetation within the protected zone may be accomplished only by mowing or hand clearing. If improvements are to be located within the protected zone of Trees, clearing by machinery will be allowed, but only in the area and to the extent necessary to install the improvements. The owner, developer, or agent shall not cause or permit the movement of equipment or the storage of equipment, material, debris or fill to be placed within the required protective barrier.

(b) During the construction stage, the owner, developer or agent shall not cause or permit the cleaning of equipment or material or the storage or disposal of waste materials such as paints, oils, solvents, asphalt, concrete, mortar or any other material within the Drip Line of any Tree or group of Trees.

(c) No damaging attachment wires (other than supportive wires for a Tree), signs or Permits may be fastened to any Tree.

(d) Protective barricades for trees other than Grand Trees shall be installed no closer than six feet or one-half the distance from the trunk to the Drip Line of the Tree, whichever is greater. Barricades may be placed three feet from the trunk of palms. Where feasible, barricades should be placed at the Drip Line of the Tree to provide greater protection and increase the chances of survival of protected Trees. Barricades shall be constructed in a post and rail configuration. The upright posts shall be a minimum of a two- by two-inch (common industry standard) wooden stake, four feet long. A minimum of a one- by four-inch (common industry standard) wooden board shall be used to connect the upright posts. High-visibility heavy-gauge tape may be substituted for the one- by four-inch connecting boards. The barricade tape must be a minimum of three inches wide, and of seven-mil-thick polyethylene construction, and be a high-visibility color. The maximum distance allowed between upright posts is eight feet. More protective barricades may be substituted with the approval of the Administrator.

(e) In lieu of erecting barricades as required in subsection (d) of this section, large property areas containing Trees and separated from construction or land clearing areas, road rights-of-way, lakes and utility easements may be barricaded by placing stakes not more than 50 feet apart and connecting the stakes with a line of string and tying colored ribbon to the string, or using three-inch-wide heavy-gauge barricade tape described in subsection (d) of this section, from stake to stake along the outside perimeters of such areas to be cleared.

(f) Silt barriers, hay bales, or similarly effective erosion control barriers will be required in any area where erosion or siltation may cause damage to Trees.

(g) Where elevation changes are proposed within the protected zone of Trees, the Applicant will be required to install retaining walls or drain tiles unless the Applicant demonstrates that such protection would be impractical. The Applicant shall have the choice of the type or design. These root protection measures shall be in place prior to the deposition of fill, or excavation of soil from the protected zone.

(h) The Administrator shall conduct periodic inspections of the site during land clearing and construction in order to ensure compliance with this article.

Sec. 54-589. Protection of Grand Trees.

(a) During Development, including single and two-family lots, all areas within the dripline of every Grand Tree shall be protected from activities that may disturb or injure the tree, (such as cut and fill activities, building pad placements, road bed construction, construction material storage, driving or parking of equipment, or trenching, etc.).

(b) Proper Grand Tree Care: Canopy and Root Pruning. When activities affect the Grand Tree within the dripline or when pruning must be performed on the crown of a Grand Tree, the following arboricultural techniques are required:

(1) Roots must be severed by clean pruning cuts. Roots can be pruned by utilizing trenching equipment that is specifically designed for this purpose or by hand digging a trench and pruning roots with a chain saw, pruning saw or other equipment designed for tree pruning. Root pruning shall be to a depth of 12 inches below existing grade or to the depth of the disturbance if greater than 12 inches below the existing grade. When underground utilities are to be installed through the dripline, root pruning requirements will be waived if the lines are installed via tunneling or directional boring as opposed to trenching.

(2) All pruning of Grand Trees shall conform to ANSI (American National Standards Institute) A300 Standards-1995 or latest edition. A copy of these standards is available through the Board of County Commissioners, Board Records Office.

(c) Tree Protection Barrier Requirements: During Development activities, including single and two-family lots, or any other potential disturbance that will impact within the dripline of any Grand Tree, protective barriers shall be placed around each Grand Tree to prevent the destruction or damaging of roots, stems, or crowns of such trees. Barriers shall remain in place and intact until the work is completed. Barriers may be removed temporarily to accommodate construction needs, provided that the manner and purpose for such temporary removal will not harm the tree and is approved by the Administrator. The following are the minimum requirements for protective barriers.

- (1) Protective posts shall be placed at the dripline for each Grand Tree, except when a plan has been approved by the Administrator to place the posts closer to the trunk.
- (2) Posts shall be a minimum of 2 x 4 inches or larger wooden post and shall be connected with a minimum of at least a 1 x 4 inch wooden board and shall be clearly flagged. Other similar methods, such as construction fencing, may be permitted if approved in writing by the Administrator in advance of installation. Posts shall be implanted deep enough into the ground to be stable and extend a minimum height of 3 feet above the ground.
- (3) Where Development activity is permitted within the dripline of a Grand Tree, the Administrator may require additional tree protection provisions to be incorporated in the conditions of the permit to assure the protection of the Grand Tree.
- (4) Where elevation changes are proposed within the dripline of any Grand Tree, the applicant will be required to install retaining walls or drain tiles unless the applicant demonstrates such protection would be impractical. The applicant shall have the choice of the type or design. These root protection measures shall be in place prior to the deposition of fill, or excavation of soil within the dripline.

Sec. 54-590. Tree planting, relocation, or replacement.

- (a) Conditions. As a condition of granting a Tree removal Permit, the Applicant may be required, where practical (see subsections (b) and (c) of this section), to relocate the Tree(s) being removed or replace the Tree(s). The replacement(s) shall: have at least equal shade potential and other characteristics comparable to those of the Tree(s) removed, be a minimum of eight feet high at time of planting, have the potential of at least a 15-foot crown, be a species protected by this article, and be Florida Department of Agriculture Nursery Grade #1 or better. A list of acceptable replacement Trees will be on file in the Administrator's office, and will be attached to Permits that require planting. Alternatives with respect to size and species may be approved if the Applicant demonstrates that such substitutions will be consistent with the purposes of this article. Written approval from the Administrator is required prior to planting any alternative Tree.
- (b) Tree planting and replacement. In connection with the removal of any Tree(s) pursuant to a Tree Removal and Protection Permit, a minimum number of replacement Trees shall be required based on the following square footage areas. A minimum of one Tree will be required for each 2,000 square feet of "Treed Area" or any part thereof within a parcel for which a Tree Removal and Protection Permit has been issued. For excavations of greater than 50,000 cubic yards, and for which a Level II or Level III earthmoving permit is issued, the replanting requirement shall be reduced to a minimum of five Trees per acre of "Treed Area," except that all such excavations that were issued earthmoving permits prior to the date of this amendment [June 8, 1998,] shall not be subject to

these replacement requirements. However, any Tree(s) left in good growing condition on the site shall be counted toward these minimum numbers. Selection of replacement Trees, their number and species shall be determined by analysis of Tree canopy cover, spacial limitations, other characteristics and soil conditions.

- (1) Replacement Trees shall be a species of similar height and crown spread, Florida #1 or better quality as per Grades and Standards for Nursery Plants (Florida Department of Agriculture and Consumer Services). All replacement Trees shall be a minimum of eight feet in height when planted, and have a trunk diameter of

at least two inches (measured at six inches above the ground). Trees must be a minimum of 25-gallon container size or have a minimum two-foot root ball if field grown.

- (2) Trees shall be placed so that they will develop freely and at maturity will not crowd utility lines or other structures. The root ball must be planted at the proper height and in accordance with accepted nursery standards. Trees shall have a mulched bed a minimum of three feet in diameter and three inches deep to conserve water and promote growth.
- (3) If Trees need to be staked, it shall be done in a manner that will not injure the Tree. The straps attached around the trunk shall be a broad, soft material and shall be tied loosely enough to allow movement of the trunk in the wind.

(c) Tree bank. Where a Tree(s) is (are) to be removed under the provisions of this article, the County shall have the option, with the owner's permission, to relocate the Tree(s) (not being relocated within the property) at the County's expense. If the County does not elect to relocate any such Tree, it may give the School Board or any city within the County the right to acquire any such Tree(s) at the city's expense for relocation within the city's incorporated area for public use, or to a School Board site at their expense. The relocation shall be accomplished within 15 working days of the issuance of a Permit, unless it is necessary to root prune the Tree(s) to assure survival, in which case the relocation shall be accomplished within 30 working days of the issuance of a Permit or other suitable schedule as agreed to by all parties.

(d) Credit for other plantings. Trees planted in compliance with the requirements of the Land Development Regulations (Chapter 74 of this Code) and landscaping requirements of the Zoning Ordinance (Appendix A to this Code) may be used to help satisfy the requirements of this section.

(e) Timing and location. Trees required to be planted in accordance with this section shall be in place and established prior to the issuance of a certificate of occupancy. Said Trees shall not be located closer than three feet to any property line, or six feet from any utility line or County easement. Replacement Trees shall not be planted underneath or near overhead utility lines unless they are a species that, when mature, will not interfere with the utility line. The planting site must have sufficient root zone and canopy space to reasonably allow the Tree(s) to grow to a mature size.

(f) Tree survival. Consultation with the Administrator is recommended during the entire Tree planting program. All Trees relocated or replaced in accordance with the terms of this article shall be replaced by the current property owner should the Trees expire anytime within two years after planting, as determined by the Administrator.

Sec. 54-591. Emergency Tree removal.

When it is necessary to expedite the removal of damaged or destroyed Trees in the interest of public safety, health, and general welfare following high winds, storms, hurricanes, tornados, floods, freezes, fires or other manmade or natural disasters, the Board may by resolution declare an Emergency, and suspend the requirements of this article for a period of up to 30 days in the affected areas.

Sec. 54-592. Penalties.

Violation of this article, or any Permit issued thereunder, shall be punishable by a fine of not to exceed \$500.00 or by imprisonment in the County jail not to exceed 60 days or by both such fine and imprisonment. Each unauthorized removal of a Tree protected by this article shall be deemed a separate offense.

Sec. 54-593. Withholding of Permits and imposition of stop orders.

Until the provisions of this article, including the conditions of any Permits issued thereunder, have been fully met, the County may withhold issuance of any building permit, certificate of occupancy, or inspection required under the current County building code or issue stop orders for any Development, or construction or demolition on single-family and two-family Lots, involving Tree removal.

Sec. 54-594. Appeals.

Any Person aggrieved by the administration or interpretation of any of the terms or provisions of this article may appeal to the Board, which, after a hearing, with notice to the appellant, may reverse, affirm, or modify, in whole or in part, the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Administrator from whom the appeal is taken.

Sec. 54-595. Civil and administrative remedies.

(a) The Board may have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of this article, and any Permit issued thereunder, including injunctive relief to enjoin and restrain any Person from violating its provisions, and such damages as may be sustained by virtue of this article, together with all costs and expenses involved in the case. The provisions of this article, or any Permit issued thereunder, may also be enforced through code enforcement proceedings under the provisions of Ordinance 93-006 (Chapter 2, Article VIII, of this Code).

(b) Any Tree removed in violation of the provisions of this article or any Permit issued thereunder may be mitigated on the Lot, by replanting a Tree of twice its size and type. The Applicant may choose to mitigate the violation by replanting the same type Trees with three-inch DBH or greater, in a sufficient number such that the total number of DBH inches of the replanted Trees equals twice the total number of DBH inches of Trees removed without authorization. Trees shall be Florida #1 or better quality as per Grades and Standards for Nursery Plants (Florida Department of Agriculture and Consumer Services). Alternatively, the Applicant may choose to mitigate the violation by paying a mitigation fee of \$200.00 per diameter inch of the Trees removed without authorization, to the reforestation special revenue fund. This fund shall be used only for the purposes of acquiring, planting, and protecting Trees within the County. A maximum of ten percent (10%) may be used to recover costs of administration and enforcement of this article. Any mitigation fee imposed by a hearing officer or Special Master shall be deposited into the reforestation special revenue fund.

- (1) The reforestation special revenue fund shall be kept and maintained by the Clerk of the of the Board of County Commissioners.
- (2) The Executive Director of the Development Services Business Center shall have the authority to disburse funds for projects in accordance with the following criteria:
 - (a) Projects shall involve plantings on publicly owned land.
 - (b) Projects shall not be used to satisfy any landscaping required by the County Zoning Ordinance, Ordinance No. 75-38, as amended (Appendix A to this Code). Tree plantings may supplement required landscaping.
 - (c) Projects may include enhancement or restoration of native habitats, unless required through permitting or regulation.
- (c) In lieu of mitigation, if the Applicant can clearly demonstrate that any Tree removed without a Permit would have met the criteria for removal listed in Section 54-587(a) at the time the Trees were removed, then only an after-the-fact Permit will be required for only those Trees that met the criteria.
- (d) No Permit approvals or certificate of occupancy shall be issued to any violators of this article until the violation has been certified by the Administrator as properly corrected.
- (e) Any Grand Tree removed in violation of this Article or any permit issued thereunder, and not mitigated as required in paragraph (b) of this section, shall be mitigated by paying a fee equal to \$500 per diameter inch (DBH) to the reforestation special revenue fund.

Sec. 54-596. Territorial applicability.

The provisions of this Article shall be effective throughout the unincorporated area of Sarasota County, Florida. Otherwise, it shall be effective within the incorporated municipalities to the extent that those municipalities adopt the same provisions and provide by interlocal agreement for enforcement by the County. Where any provision of this Ordinance refers to a local ordinance, board, or official, it shall refer to the appropriate County ordinance, board, or official, and not to any municipal one, except pursuant to the provisions of an interlocal agreement. The Board may provide for enforcement within any municipality through an interlocal agreement.

Sec. 54-597. Severability.

If any provision of this article is for any reason finally held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions.

Sec. 54-598. Interpretation.

Where any provision of this article refers to or incorporates another provision, ordinance, statute, rule, regulation, policy, official publication, or other authority, it refers to the most current version, incorporating any renumbering thereof or amendments thereto.

Sec. 54-599. Sunset provision.

This article shall be automatically repealed on June 30, 2009 unless otherwise amended or ratified by the Board of County Commissioners of Sarasota County, Florida.

Section 4. Effective Date: This Ordinance shall take effect immediately upon receipt by the Office of the Secretary of State of Florida.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, this 12th day of November, 2003.

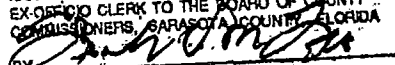
BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

BY: 
VICE-CHAIRPERSON

ATTEST:

KAREN E. RUSHING, clerk of
the Circuit Court and Ex-officio
Clerk of the Board of County
Commissioners of Sarasota County, Florida

BY: 
Deputy Clerk

STATE OF FLORIDA
COUNTY OF SARASOTA
I HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE AND CORRECT COPY OF THE ORIGINAL FILED
IN THIS OFFICE WITNESS MY HAND AND OFFICIAL
SEAL THIS DATE 12/27/03
KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT
EX-OFFICIO CLERK TO THE BOARD OF COUNTY
COMMISSIONERS, SARASOTA COUNTY, FLORIDA
BY: 
DEPUTY CLERK

**APPENDIX H – Sarasota County Ordinance No. 2003-028, amending the
Land Development Regulations No. 81-12**

2003 NOV 19 AM 7:48

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, RELATING TO THE MYAKKA RIVER PROTECTION ORDINANCE, RELATING TO REGULATIONS GOVERNING SUBDIVISIONS AND THE DEVELOPMENT OF LAND; AMENDING SARASOTA COUNTY ORDINANCE NO. 81-12, AS CODIFIED IN CHAPTER 74 OF THE SARASOTA COUNTY CODE; PROVIDING FOR A FINDING OF CONSISTENCY WITH THE COMPREHENSIVE PLAN; PROVIDING FOR PURPOSE; AMENDING SECTIONS 74-7, 74-31, 74-61 AND THE ENVIRONMENTAL TECHNICAL MANUAL OF CHAPTER 74; PROVIDING FOR AN EFFECTIVE DATE.

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

1. The Board of County Commissioners, sitting as the Land Development Regulation Commission, has found this ordinance to be consistent with *Apoxsee*, the Revised and Updated Sarasota County Comprehensive Plan.
2. Section 74-7(c) of the Sarasota County Code is hereby amended to add/modify definitions and read as follows:

FIRE PROTECTION CLEAR ZONE. That area surrounding a structure with a width determined by the Fire Marshal as necessary to protect a structure from wildfire.

INVASIVE SPECIES. For the purposes of these regulations, the acceptable listings of invasive species can be found in Sarasota County's Exotic Plant Code, Section 54-621, state regulations (Chapters 5B-57.007 and Chapter 62C-52.011 of Florida Administrative Code), the Florida Exotic Pest Plant Council's list of Category I and II invasive species as appropriate to this geographic region, as well as the following species: *Talipariti tiliaceum* (Sea hibiscus). In addition, Sarasota County reserves the right to develop additional lists of non-native, nuisance and invasive species.

MYAKKA RIVER AREA. That corridor of land beneath and surrounding the Myakka River from river mile 7.5 to river mile 41.5, contained in part III, Chapter 258, Florida Statutes, together with a corridor of land including the maximum upland extent of wetland vegetation as determined by the Department of Environmental Protection pursuant to Chapter 403, Florida Statutes, and Chapters 62-3 and 62-312, Florida Administrative Code.

MYAKKA RIVER NATIVE VEGETATION. Plants that are indigenous to the Myakka River Protection Zone.

MYAKKA RIVER WILD AND SCENIC PROTECTION ZONE. An upland buffer that extends 220 feet on each side of the Wild and Scenic segment of the Myakka River (from river mile 7.5 to river mile 41.5) measured from the landward edge of the Myakka River Area.

VEGETATION REMOVAL. Any act by which vegetation is relocated, trimmed, poisoned, uprooted, disced, mowed, cut down, or in any other manner destroyed or altered.

3. Section 74-31(b)(1) of the Sarasota County Code is hereby amended to add paragraph a., which reads as follows:

a. An owner or owner's representative shall request a pre-application meeting prior to undertaking any activity pertaining to the ordinances which relate to the Myakka River Wild and Scenic Protection Zone. The County shall not be required to accept an application as submitted until such a meeting has occurred.

4. Section 74-61(b)(4) contained in Chapter 74 of the Sarasota County Code is hereby amended to add paragraph a., which reads as follows:

a. An owner or owner's representative shall request a pre-application meeting prior to undertaking any activity affected by the ordinances which relate to the Myakka River Wild and Scenic Protection Zone. In the absence of such a meeting, the County shall not be required to accept the application as submitted.

5. The Environmental Technical Manual contained in Chapter 74 of the Sarasota County Code is hereby amended to add Section F, which reads as follows:

F. MYAKKA RIVER PROTECTION ZONE

(a) DEFINITIONS. For purposes of this section, notwithstanding anything contained herein to the contrary, the definition of Development shall be: A subdivision of land or a site and development as defined by these regulations, a residential mobile home park, and any other construction whether residential, commercial, industrial, office, professional, institution, or recreation.

(b) GENERAL. The vegetation removal standard for the Myakka River Protection Zone contained below provides protection for the resource values identified in the Myakka Wild and Scenic River Management Plan. For the purposes of this standard, the Myakka River Protection Zone consists of four zones, which are delineated graphically in Appendix E1, and are also described as follows:

1. ZONE 1. The fire protection zone. That zone, of variable width, constituting the minimum allowable vegetative removal and turfgrass installation area necessary to allow for fire protection purposes such as the positioning of fire trucks and hoses, as well as to serve as a fire protection defensible space.
2. ZONE 2. The house and other structures, on a lot or parcel, as well as the area between the house and the street.
3. ZONE 3. The area between the landward extent of the 50-foot watercourse protection buffer of the Myakka River Area and the landward extent of the Myakka River Protection Zone, excluding zones 1 and 2.
4. ZONE 4. The 50-foot watercourse protection buffer of the Myakka River Area.

(c) JURISDICTION. The following standard shall apply to all parcels within the Myakka River Protection Zone.

(d) VEGETATION REMOVAL. The removal of native vegetation and or turfgrass installation shall be prohibited within the Myakka River Protection Zone with the exception that the continuation of yard maintenance activities such as mowing, trimming, or pruning of vegetation that had been conducted within the Myakka River Protection Zone prior to the adoption date of this amendment, and with the exception of the following:

1. ZONE 1 AND 2 EXCEPTIONS. Vegetative removal may be allowed in association with County-approved permits for construction of structures or to create or maintain a fire protection clear zone around the structure. The fire protection clear zone for structures in the Myakka River Protection Zone shall be determined by the Fire Marshal during the permitting process.

2. ZONE 3 EXCEPTIONS. Native vegetation removal may be allowed in Zone 3 only after review and written approval by Resource Protection only for the following purposes:

a. To create or maintain private nature trails.

b. To create or maintain a single access to a permitted dock or pier.

c. To conduct native understory vegetation management, in accordance with a County-approved management plan, to reduce fuel loads.

d. Reasonable selective pruning of side branches to enhance a view from a primary structure within or outside the River Protection Zone. Such selective pruning shall not occur within the River Area and the view "window" through the River Protection Zone preferably should be co-aligned with other approved vegetative removal (i.e., paths or access to a dock or pier).

e. Native vegetation removal associated with and limited to exempt earthmoving activities listed in Section 4(b) of Chapter 54, Article XII of the Sarasota County Code.

3. ZONE 4 EXCEPTIONS. Native vegetation removal may be allowed in Zone 4 only after review and written approval by Resource Protection only for the following purposes:

a. To create or maintain private nature trails.

b. To create or maintain a single access to a permitted dock or pier.

c. To conduct native understory vegetation management, in accordance with

a County-approved management plan, to reduce fuel loads.

d. Reasonable selective pruning of side branches to enhance a view from a primary structure within or outside the River Protection Zone. Such selective pruning shall not occur within the River Area and the view "window" through the River Protection Zone preferably should be co-aligned with other approved vegetative removal (i.e., paths or access to a dock or pier).

e. Native vegetation removal associated with and limited to exempt earthmoving activities listed in Sections 54-349(b)(9), 54-349(b)(10), and 54-349(b)(15) of Chapter 54, Article XII of the Sarasota County Code.

(e) REMOVAL OF NON-NATIVE, NUISANCE AND INVASIVE SPECIES. The removal of non-native, nuisance, and invasive species is allowed, provided such removal does not damage native vegetation

(f) TREE REMOVAL. Tree removal shall be subject to the regulations contained in Sarasota County Code Section 54, Article 28.

(g) REQUIREMENTS FOR ON-SITE SEWERAGE DISPOSAL SYSTEMS. Within the Myakka River Protection Zone, on-site sewerage disposal systems, whether upon a lot, a parcel, or within a subdivision, shall be located landward of the primary structure.

(h) PENALTIES. Any person who fails to comply with the requirements of this standard shall be required to restore the affected or impacted portion of the Myakka River Protection Zone to its pre-existing elevation and native vegetation. The person shall be also be required to monitor and maintain said restorative vegetation for a minimum of one year.

6. Section B.6.b.1) of the Subdivision Technical Manual contained in Chapter 74 of the Sarasota County Code is hereby amended to read as follows:

1) On-site sewerage disposal systems should be located in the front yard or other area, which will provide a convenient and economical connection to a future central sewerage system. Within the Myakka River Protection Zone, on-site sewerage disposal systems whether upon a lot, a parcel, or within a subdivision shall be located landward of the primary structure.

7. Effective Date. This Ordinance shall take effect immediately upon receipt of official acknowledgment from the Office of Secretary of State that this Ordinance has been filed with said office.