

COUNTY OF HENDRY, STATE OF FLORIDA

ORDINANCE NO. 2010 - 15

RECORDED IN ORDINANCE BOOK XII, PAGE 286

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF HENDRY COUNTY, FLORIDA, AMENDING THE HENDRY COUNTY CODE OF ORDINANCES, SPECIFICALLY SECTION 1-53-6.16, TO MAKE VARIOUS CHANGES TO THE REGULATIONS GOVERNING MINING, PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION, INCLUSION IN CODE, AND SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Hendry County has adopted the Hendry County Land Development Code pursuant to the authority granted by the Florida Constitution, Florida Statutes, and Laws of Florida; and

**WHEREAS**, the purpose of the Code is to provide for orderly growth, to encourage the appropriate use of land, to discourage incompatible uses of adjacent properties, and to implement the goals and objectives of the Hendry County Comprehensive Plan; and

**WHEREAS**, mining is currently regulated by Section 1-53-6.16 of the Code, and the County desires to make various changes to assure reasonable reclamation of disturbed areas and some other changes to the regulations affecting mining.

**NOW THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Hendry County, Florida, that the following amendments to the Hendry County Code of Ordinances are hereby made:

**SECTION ONE.** Section 1-53-6.16 of the Hendry County Code of Ordinances is hereby amended to read as follows:

*1-53-6.16(c) (1), (2) No change.*

*(3) **Blasting.** If blasting will be conducted in conjunction with the ~~excavation~~ mining operation, all blasting shall be done under applicable regulations. Prior to blasting, no overburden shall be*

removed from the area planned for ~~excavation~~ mining unless otherwise approved by the planning and zoning department.

(4) *Interference with drainage systems.* The ~~excavation~~ mining will not interfere with the natural function of any sanitary, storm or drainage system, or natural flowage way, whether public or private, so as to create flooding or health hazards or jeopardize the natural resources and environment of the county.

(5) *Noise.* Noise generated by the ~~excavation~~ mining operation will not cause a violation of any applicable ordinance. Rock crushing operations or material stockpiles that will be adjacent to any existing residential area shall require specific approval from the board of county commissioners.

(6) *Protection of water quality.* The ~~excavation~~ mining operation will not adversely affect groundwater levels, water quality or surface water flow ways. The conditions may require the applicant to monitor the quality of the water in the excavation and adjacent groundwater and surface water. Under no circumstances shall ~~the excavation~~ mining be conducted in such a manner as to violate applicable water quality standards.

(7) *Safety hazards.* The ~~excavation~~ mining operation will be constructed so as not to cause an apparent safety hazard to persons or property.

(8) *Setbacks.* Excavations shall be located so that the top-of-bank of the excavation shall adhere to the following minimum setback requirements:

a. Seventy-five feet from the right-of-way line or easement line of any existing or proposed private or public street, road, highway or access easement.

b. Fifty feet from side, rear or abutting property lines, except where the excavation abuts a residentially zoned district, the setback shall be 100 feet from the residentially zoned property.

(9), (10) No change.

(11) *Fencing.* Except when alternative fencing is approved by the board of county commissioners, the ~~excavation~~ mining operation shall be enclosed with a minimum of a four-foot-high fence with "no trespassing" signs placed no more than 100 feet apart. Any fencing may be removed upon final completion of reclamation and confirmation thereof by all governmental authorities with jurisdiction.

(12), (13) No change

(14) *Site Development Plan, Site Improvement Plan, or Construction Plans.* Prior to commencement of any activities on site, the applicant shall obtain approval of a site development plan, site improvement plan, or construction plans approval in accordance with sections 1-58-56, 1-54-14, or 1-58-59, respectively, et seq. The applicant may propose phasing the mining activities. The plan shall contain the following information at a minimum:

1. Watercourse and water bodies;
2. Wetlands;
3. Indigenous vegetation areas;
4. Boundaries;
5. Public and private roads, and vehicle access routes to the nearest county or state maintained road;
6. Utility lines and easements;
7. Public and private wells, permitted by the applicable governmental agency, within a one-half (1/2) mile radius around the mining boundary;
8. Septic tanks, drain fields, and chemical and fuel storage tanks within a 1/2 mile radius around the mining boundary;
9. Railroads; and

10. Structures/buildings.

(15) *Restoration.* Upon completion of the ~~mining excavation~~ operation, the subject property shall be restored as required by the 1986 State of Florida Resource Extraction Reclamation Act (F.S. ch. 378, Part IV). Reclamation shall mean the reasonable rehabilitation of the total disturbed area where the ~~resource extraction mining~~ has occurred, and shall meet the reclamation performance standards established by the ~~State~~, and contained herein. All disturbed areas, including the excavation side slopes above the water line and a 20 foot wide area around the entire perimeter of the excavation, shall be sodded or fertilized and seeded with a "quick catch" seed within 14 days of the final side slope shaping in order to minimize the potential for erosion.

A. Reclamation Requirements

i) Reclamation Plan. Plans and other appropriate documents accurately depicting the plan of reclamation, consistent with the standards detailed herein are required. The reclamation plan shall be a part of the site development plan, site improvement plan, or construction plans to be approved by the County. The Reclamation Plan must include:

1. A schedule for the commencement and phasing of reclamation, and planting plans for the littoral zone created wetland areas and any indigenous replanting including the species, quantities, and size upon planting. The reclamation must begin no later than sixty (60) calendar days after cessation of mining or when activities in a mining cell or area is completed. If mining ceases in a cell or area for a period of 120 consecutive days, mining of that cell shall be deemed completed and reclamation shall be commenced within 180 calendar days after the date mining was last performed. Reclamation must be completed within one (1) year from the date the reclamation begins with respect to each mining cell or area, unless otherwise authorized by the Planning Director.

2. Description of the manner in which restructuring, reshaping, and stabilization of lake banks will be accomplished. The plan must also show proposed elevations and final grades for the site.

3. Show all areas to be reclaimed, including the specific locations and descriptions of the following areas:

- a) Mitigation and preservation areas established for wildlife species;
- b) Indigenous area to remain as indigenous replanting areas;
- c) Type and location of vegetation to be preserved;
- d) The natural and man-made features that will exist after reclamation is completed; and
- e) Littoral zone created wetland areas.

4. Depict at least two (2) typical cross sections, with elevations, showing areas to be filled, back-filled, reconstructed, or reshaped. Water elevations shall also be shown.

5. The Applicant shall provide an estimate for the cost of implementation of the plantings called for by the reclamation plan, prepared and signed by a registered landscape architect, which shall include cost estimates for the implementation of the reclamation plan.

6. All reclamation plans submitted shall be drawn to a minimum scale of 1" = 200' based on the size of the project and sheet sizes shall be 22" X 34".

ii) Reclamation standards. All excavated lakes must be designed to ensure appropriate native wetland areas will be created as a littoral shelf to provide long term water quality benefits, a source of natural organics for the lake, and wildlife habitat. Mining operations will be subject to the following reclamation standards to ensure long term plans to sustain or improve the baseline water quality as well as sustain fish and wildlife. These conditions are not intended to conflict with the wetland permitting requirements of the U.S. Army Corps of Engineers, Florida Department of Environmental Protection, or the South Florida Water Management District.

1. Areas disturbed by mining, including the top of lake banks, must be stabilized with native plants, sod, or grass seeding at completion of mining or completion of a separate mining cell or area in accordance with the reclamation plans.

2. The perimeter of any lakes shall be non-linear with corners no less than twenty-five (25) feet in radius.

3. Reclamation must be completed along the perimeter of the mining area and within the excavated lake. A littoral zone shall extend around 75% of the linear shoreline of the lake.

4. In order to maximize the ecological benefits of the lake, the littoral zone shall be developed to meet the following requirements:

- a) The littoral zone shall have a non linear shape;
- b) The created littoral zone must be designed with a slope no steeper than 8:1, that extends 1.0 foot above control elevation and that reaches a depth of not less than 2.0 feet below control elevation;
- c) The littoral zone shall be created with foraging pockets with varying depths for low water levels; and
- d) Plantings shall be provided for 50% vegetative cover within one year from the time of planting; and include a diversity of indigenous species, including wetland trees, wetland shrubs, and herbaceous species. No more than 25% of one plant species may be utilized above the control elevation, nor more than 50% of one plant species below the control elevation. At least six (6) native species must be planted as part of the created littoral zone.

5. The created littoral zone must be maintained free of exotic and nuisance plant species. Methods and a plan to control exotic and nuisance species shall be provided.

6. All spoil piles and stockpiles of material must be removed from the site or incorporated into the reclamation plan when mining is completed.

7. After mining is complete and upon reclamation of the site, cross sections shall be done every 300 feet along the lake bank to ensure slopes are correct and shall extend from the top of the lake bank to the bottom of the lake.

(d) no changes

(e) *Performance guarantee.* Prior to site development plan approval, the permittee shall provide a performance guarantee to ensure compliance with the provisions of this section in the form of an escrow agreement, letter of credit or performance bond. The performance guarantee shall be on forms approved by the county attorney. Governmental entities shall be exempt from providing a performance guarantee. The three forms of performance guarantees are:

1. A cash deposit or certificate of deposit for the benefit of the board of county commissioners documented by way of an escrow agreement with an escrow agent located in Florida;
2. An irrevocable letter of credit for the benefit of the board of county commissioners issued by a Florida bank or credit union. Said letter of credit shall, at a minimum, be irrevocable for a term of not less than one (1) year and will be automatically extended without amendment for successive one year periods until completion of reclamation activities unless, not less than 60 days prior to the then-relevant expiration date, the county receives notice by registered mail that the letter of credit shall not be extended for the additional time period. In the event that the letter of credit is not extended, the permittee shall secure a replacement performance guarantee not less than 30 days prior to the then-relevant expiration date, failing which the County shall be entitled to make a claim on the full amount of the letter of credit. No mining activities may occur unless a valid performance guarantee is in place; or
3. A performance bond for the benefit of the board of county commissioners issued by a Florida registered surety company having a Best's rating of A+. ~~Said bond shall be cancelable only upon a written 60-day advance notice given the planning and zoning department.~~

The performance guarantee posted for ~~on-site excavation activities~~ road impacts and final grading shall be in an amount of no less than \$10,000.00 and for mining areas excavations in excess of 50,000 cubic yards shall be computed at the rate of \$0.20 per cubic yard to be excavated to ensure compliance with the provisions of this section and the PUD ordinance or special exception resolution (whichever the case may be). The littoral plantings and any other vegetative plantings required by the approved reclamation plan shall be assured by a performance guarantee in an amount at least 120% of the estimated cost of completion of the plantings and no less than \$10,000.00.

Where mining activities will be conducted in phases as approved in the site development plan, the performance guarantee shall be provided for the largest phase and the mining activities may occur only on one phase at a time. The performance guarantee shall be executed by the permittee and shall remain in effect until the reclamation excavation is completed in accordance with ~~the~~ this

section. All performance guarantees shall be kept in continuance effect and shall not be allowed to terminate without the written consent of the planning and zoning department. Should the county find it necessary to utilize the performance guarantee to undertake any corrective work ~~on the excavation, or to complete the excavation~~ under the terms of this section, or to correct any off-site impacts of the mining operation, the permittee shall be financially responsible for all legal fees and associated costs incurred by the county in making a claim on the performance guarantee. In the event an ~~excavation~~ permittee shall commence reclamation and shall execute a construction contract for the required reclamation of the mining excavation project, the performance guarantee required by this section may be released if the county is the beneficiary of an adequate performance bond issued for the construction contract. The county may release an appropriate portion of the performance guarantee required by this section to a permittee who has completed reclamation of a portion of the mining excavation project.

#### **SECTION TWO. Severability.**

The provisions of this ordinance are severable and it is the intention to confer the whole or any part of the powers herein provided for. If any provision of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, that portion will be deemed a separate provision and will not affect any remaining provisions of the ordinance. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such unconstitutional provision was not included.

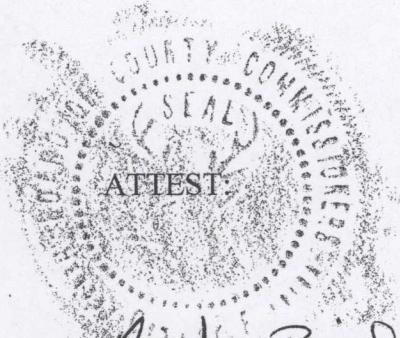
#### **SECTION THREE. Codification, Inclusion in Code, and Scrivener's Errors**

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made part of the Hendry County Code; and that the sections of this ordinance may renumbered or re-lettered and that the word "Ordinance" may be changed to "section," "article" or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the

intent may be authorized by the County Administrator's designee, without need of a public hearing, by filing a corrected or re-codified copy of same with the Clerk of the Circuit Court.

This Ordinance shall take effect immediately upon its filing with the Secretary of State.

Duly passed and adopted in Regular Session of the Board of County Commissioners of Hendry County, Florida this 27th day of April, 2010.



*Amita Buschel D.C.*  
Barbara Butler, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF HENDRY COUNTY, FLORIDA

*Janet B. Taylor*  
Janet B. Taylor, Chairwoman