

**INDIAN RIVER COUNTY  
M E M O R A N D U M**

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**TO:** Jason E. Brown  
County Administrator

**THROUGH:** Phillip Matson, AICP  
Community Development Director

**THROUGH:** James Ennis  
Public Works Assistant Director

**FROM:** Andrew Sobczak  
Assistant Community Development Director

**DATE:** August 8, 2022

**RE:** Waiver to Cut and Fill Balance Requirements for Commercial/Industrial  
Development in Flood Hazard Areas

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It is requested that the Board of County Commissioners formally consider the following information at the Board's regular meeting of August 16, 2022.

**BACKGROUND**

Since 1978, Indian River County has participated in the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP). Under the NFIP, flood insurance rates in the unincorporated County are discounted based on the degree to which the county adopts and implements flood protection standards (measured by the Community Rating System (CRS) score) that are higher than the minimum NFIP standards. One such example is the regulation of construction in "Special Flood Hazard Areas" (SFHAs), including implementation of the County's "cut and fill" balance requirements.

Since 1982, Indian River County has required "cut and fill" balance for development within SFHAs. Also known as compensatory storage, cut and fill balance requires creation of an equal volume of floodplain storage capacity for any volume of the base flood that would be displaced by fill or structures within SFHAs. As specified in County Code subsection 930.07(2)(i) the cut and fill balance requirement applies to all development within SFHAs, with the following exceptions:

1. Development projects within SFHAs along the Indian River Lagoon granted a waiver by the county upon showing the development will not create a material adverse impact on flood protection;
2. Subdivided lots of less and one acre that existed prior to July 1, 1990, on the basis that such lots are too small to balance on each individual lot, and post-1990 lots are mitigated on a subdivision-wide basis;
3. Development projects located in the St. John's Marsh with soil classifications indicative of marsh conditions, when granted a waiver by the county based on a lack of material adverse impact; and
4. Development located within the Vero Lake Estates Municipal Services Taxing Unit (MSTU) for which a waiver has been granted, in consideration of off-setting overall VLE stormwater improvement.

In 2017, County Staff was contacted by commercial property owner Ralph Poppell with a request that the County waive the cut and fill requirement as it pertains to his commercial property located on the south side of SR 60, west of I-95, to allow the filling of a + 1/2-acre pond onsite without providing compensatory storage. At the time, Mr. Poppell expressed concerns that a cut and fill balance requirement was not mandated by FEMA, and made small-scale commercial/industrial development difficult.

### **ANALYSIS**

Following discussions with Mr. Poppell concerning his request, County Staff researched the feasibility of establishing a waiver to the cut and fill balance requirements, and presented a draft LDR revision to the Board on August 15, 2017. At that meeting, the Board voted to approve the draft LDR revision, and directed staff to evaluate the process and report back at a future meeting. To that end, Staff has further evaluated the waiver and added the following four requirements for the waiver:

1. The development site must be under five (5) acres in size.
2. A formal site plan through the Community Development Department is required for waiver consideration.
3. A formal engineering analysis completed by a licensed professional engineer is required to demonstrate that no onsite or offsite drainage impacts will result. The analysis must also be recorded into public record as part of the formal property record.
4. The development site must be within a Commercial/Industrial Zoning District at the time of the LDR revision (waiver) adoption.

The additional requirements narrow the list of eligible properties, and better aligns the waiver with properties that serve to benefit most from it. In addition, the requirements include a formal analysis completed by a licensed professional engineer to demonstrate that onsite or offsite impacts will not occur. Furthermore, existing provisions will be retained that offer additional protection, such as not allowing waivers to be granted for structures or fill within the floodway of the St. Sebastian River.

### **RECOMMENDATION**

Staff recommends that the Board of County Commissioners review the proposed draft changes to Land Development Regulation Subsection 930.07(2)(i), and direct Staff to proceed with the formal adoption process.

### **ATTACHMENTS**

1. Proposed Land Development Regulation Subsection 930.07(2)(i)
2. Minutes from the 8/15/2017 BCC meeting