

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

TO: Jason E. Brown
County Administrator

THROUGH: Stan Boling, AICP
Community Development Director

FROM: Roland M. DeBlois, AICP
Chief, Environmental Planning

DATE: August 7, 2017

RE: Request to Consider Establishing an Exception to Cut and Fill Balance Requirements for Commercial /Industrial Development in Flood Hazard Areas

It is requested that the Board of County Commissioners formally consider the following information at the Board's regular meeting of August 15, 2017.

BACKGROUND

In 1968, Congress created the National Flood Insurance Program (NFIP) by adopting the National Flood Insurance Act. In 1973, passage of the Flood Disaster Protection Act mandated that buildings located in flood hazard areas have flood insurance coverage as a condition of federal aid or loans from federally insured banks and as a condition of federal disaster assistance. The NFIP is managed by the Federal Emergency Management Agency (FEMA).

Since 1978, Indian River County has been a participant in the NFIP. Under the NFIP, Indian River County is responsible for implementing certain requirements. One such requirement is to regulate construction design in "Special Flood Hazard Areas" (SFHAs) to address potential flood impacts. Chapter 930, Stormwater Management and Flood Protection, of the land development regulations (LDRs) contains the County's flood protection requirements. In addition to minimum NFIP requirements, other County measures, including certain "optional" regulations, affect the County's Community Rating System (CRS) score and flood insurance discounts for the unincorporated area. The CRS is discussed more fully in the analysis section of this report.

Cut and Fill Balance Requirement

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. That requirement, also applied in other jurisdictions, operates to retain flood storage volume within a flood hazard area and not "lose volume" as new development occurs within a flood hazard area, with certain specific exceptions. The cut and fill requirement is established in Comprehensive Plan Stormwater Management Sub-Element Policy 5.3 (see Attachment 6) as well as in LDR Chapter 930.

As specified in County Code subsection 930.07(2)(i) [Attachment 2 to this report], the cut and fill balance requirement applies to all development with 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 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 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 improvements.

Recently, county staff was approached by a commercial property owner (Ralph Poppell) who requested that the county waive the cut and fill requirement as it pertains to his property, to allow the filling of a $\pm \frac{1}{2}$ acre pond (excavated circa 1982) without providing any off-setting compensatory storage. Concerns were expressed about the cut and fill balance requirement making commercial/industrial development more difficult than it should be and that the requirement is not mandated by FEMA. Mr. Poppell’s property consists of approximately 7 acres, and is located in the I-95/SR 60 commercial/industrial (C/I) node on the south side of SR 60, west of I-95 (see map, Attachment 1). Specific to Mr. Poppell’s property, floodplain storage that would be displaced by the pond filling is calculated by his engineer to be $\pm 1,100$ cubic yards.

In considering Mr. Poppell’s request, staff met with CRS auditors in July (as part of a scheduled five-year audit), and has reviewed the County’s cut and fill requirement as it applies to his property and, in general, to all commercial/industrial development within designated C/I nodes. Staff is now reporting its findings to the Board of County Commissioners and is seeking guidance from the Board in consideration of Mr. Poppell’s request.

ANALYSIS

In reviewing the county’s cut and fill requirement as it pertains to Mr. Poppell’s property and to all commercial/industrial property within county C/I nodes, planning staff received assistance from GIS staff to determine the current extent of SFHAs on such property. The following table provides that information.

Commercial /Industrial Node Property	Area (Acres)
In Flood Zone (SFHA), Developed	476.039
In Flood Zone (SFHA), Vacant	546.556
Not in Flood Zone	4,600.242
Total C/I Area in Acres	5,622.837

As indicated in the table, staff has determined that there are ± 476 acres of commercial/industrial development within SFHAs that has occurred, with post-1982 development being constructed in compliance with the cut and fill balance requirement. Staff also found that there are ± 546 acres of vacant C/I node property within SFHAs to which the current cut and fill balance requirement, if unchanged, will apply when future development occurs.

Generally, staff does not support eliminating or reducing the County's long-standing code requirement and comprehensive plan policy of requiring cut and fill balance for new development within flood hazard areas. Staff does recognize, however, that for economic development reasons the Board may wish to consider a narrowly-crafted code change that would allow minor filling not subject to the cut and fill balance requirement on commercial/industrial properties that lie within a flood hazard area.

In reviewing Mr. Poppell's request, staff has considered the alternative of creating an exception to the cut and fill requirement as it pertains to all C/I node property within SFHAs. Narrowing-down a new exception would limit the degree of potential negative impacts on flood storage volume, target economic development, and limit or preclude a negative impact on the County's CRS rating. If such an exception is to be created, the exception should be limited to:

- C/I node property (only) for economic development purposes; and
- A maximum amount of flood storage displacement per acre, in order to keep floodplain displacement to a minimum (*de minimis*).

A draft of the code change needed to establish such an exception is attached (see Attachment 3). As drafted, the exception would accommodate Mr. Poppell's proposal to fill his pond without off-setting "cut." It is staff's position that Comprehensive Plan Stormwater Sub-Element Policy 5.3 would need to be updated in the next available comprehensive plan amendment "window" if a new cut and fill exception is added to LDR Chapter 930. It is also staff's position that the cut and fill requirement could not be eliminated without first deleting Policy 5.3 through a comprehensive plan amendment.

NFIP CRS Rating Implication

Indian River County participates in the Community Rating System (CRS) of the NFIP, whereby flood insurance premiums in the unincorporated county are discounted based on the degree to which the County adopts and implements higher standards than minimum NFIP requirements. Regarding cut and fill (compensatory storage), in SFHAs, such a requirement is a higher local standard (not mandatory), for which the County gets CRS point credit (see FEMA information on compensatory storage, Attachment 4). Currently, Indian River County is a Class 6 CRS community, meaning that property owners with flood insurance for structures in SFHAs receive a 20% discount on flood insurance premiums. Comprehensive Plan Coastal Management Element Policy 5.4 provides that the County shall maintain, at a minimum, a Class 6 CRS rating (see Attachment 6).

Attachment 5 to this report provides a summary of the 10 CRS classifications for which a local community can qualify, along with the point ranges for each class and the percentage premium reduction per classification. Indian River County's current Class 6 rating is based on an achievement of 2028 points, putting the County at the low end of the 2,000 to 2,999 point range for Class 6. Consequently, eliminating or changing an optional regulation that the County currently gets credit for, including the existing cut and fill balance requirement, would result in a worse rating if the change reduced the County's score by 29 points or more.

Each CRS classification represents a 5% discount, so if the County's classification falls from a "6" to a "7," for example, flood insurance policies for properties in flood hazard areas would lose a 5% discount benefit. With regard to County points for the cut and fill requirement, the number of points that would be lost for the previously described C/I development *de minimis* exception is relatively small, but has not been fully determined. On that note, through staff efforts made during the recent CRS five-year audit, the County may have the opportunity to gain CRS points in other categories. Lastly, the County could consider re-visiting other flood protection code requirements that may off-set the (albeit small) loss of CRS points, in order to maintain the Class 6 rating.

RECOMMENDATION

Staff recommends that the Board of County Commissioners re-affirm the policy of maintaining a CRS classification of “6,” consider the information provided herein, and provide direction to staff regarding the requested cut and fill balance exception.

ATTACHMENTS

1. Map of Mr. Poppell’s property (1931 98th Ave.) within the I-95/SRE 60 C/I node.
2. LDR Subsection 930.07(2)(i).
3. Draft of potential cut and fill balance *de minimis* exception for commercial/industrial development.
4. FEMA information on compensatory storage.
5. CRS information and Indian River County scoring.
6. Comprehensive Plan Stormwater Management Sub-Element Policy 5.3 and Coastal Management Element Policy 5.4.

M:\LDRs\930.07(2)(i) cut and fill CI except BCC staff report 8-15-17.docx