

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

**PUBLIC HEARING  
LEGISLATIVE**

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

**THROUGH:** Stan Boling, AICP; Community Development Director

**FROM:** John W. McCoy, AICP; Chief, Current Development

**DATE:** October 30, 2018

**SUBJECT:** **DiVosta Homes L.P., Request to Amend Land Development Regulation Chapter 934 (Excavation and Mining) to Modify the Time Frame for Exporting Excess Fill From Large Scale Development Projects and Extend the Time Frames for Large Volume Mining Operations [LDRA-18-09-01 / 2018060191-82197]**

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It is requested that the data herein presented be given formal consideration by the Board of County Commissioners at its regular meeting of November 20, 2018.

**BACKGROUND**

In 2008, the county conducted public workshops and hearings in its effort to fully evaluate and update its mining regulations. Those regulations apply to full-time excavation and mining operations as well as excavation and export of excess fill from non-mining projects. Current regulations adopted in 2008 include annual compliance inspections by code enforcement and stormwater division staff, thorough environmental standards, haul route standards, annual inspection and permitting standards, and penalties. No changes to those types of requirements and standards are proposed. At the end of the 2008 update process, the county adopted a set of amendments to its mining regulations. Only minor revisions have occurred since then.

Among the 2008 revisions were modifications to the criteria related to excavation incidental to development projects such as subdivisions. The 2008 mining regulation update did not adjust the time frames for mining operations, although it was acknowledged during the update process that a mining operator could simply re-apply for administrative permit/site plan approval toward the end of the mining operation approval time frame.

In 2004, DiVosta L.P. obtained Development of Regional Impact (DRI) and Conceptual PD approval for a large residential development ( $\pm$  1,500 units on  $\pm$  700 acres) located in the central part of the County between 49<sup>th</sup> Street and 53<sup>rd</sup> Street east of 58<sup>th</sup> Avenue. Construction of that project has been on-going since 2005 with the pace of construction slowing down considerably during the recent recession. Currently, the overall project is about halfway complete.

As Waterway Village was constructed and developed during the 2005-2018 period, the applicant exhausted the time frames allowed in the LDRs (land development regulations) to remove excess fill material from the Waterway Village site. To address excess fill, the applicant has re-designed portions of the project converting originally proposed lakes to green areas to reduce generation of excess fill. Even with many proposed lakes converted to green space, the project will generate more excess fill than can be exported in the time frames currently allowed. Consequently, large stockpiles of excess fill are staged on site.

After coordinating with county staff, the applicant filed the subject request to amend county mining regulations. If adopted, the proposed amendment will modify the time frames for exporting excess fill from large scale development projects (projects over 350 acres) and allow extending the time frame (number of years allowed to operate) for approved large volume mining operations that are in compliance with County and jurisdictional agency requirements. In that manner, a “balance of fairness” will be maintained between the amount of fill export time allowed for large construction projects and large full-time mining operations.

## **PZC ACTION**

At its October 11, 2018 meeting, the PZC conducted a public hearing and considered the proposed ordinance. The PZC voted 5-0 to recommend that the BCC adopt the proposed ordinance (see attachment #3).

The BCC is now to conduct a public hearing, consider the proposed ordinance, and approve, approve with modifications, or deny the proposed ordinance.

## **ANALYSIS**

- **Incidental to Construction Excavation & Exporting**

Most development projects are net importers of fill, however a few projects end up being net exporters of excess fill based on a variety of factors including project design and site conditions. When the mining and excavation ordinance was revised in 1990, the code was modified to limit the manner and time frame afforded development projects to export excess fill based on the size of the project and volume of excess fill to be removed. The intent of having time limits on export activity is to keep full time mining operations from masquerading as development projects and operating full-time on non-agricultural land where mines are not allowed. Consequently, it is logical to set limits on incidental to construction off-site fill hauling activity.

Under the current LDRs, the Waterway Village development is limited to a continuous 18 month window for every 350 acres, resulting in a total of two 18 month periods since the development is slightly over 700 gross acres. Both continuous 18 month periods have been used while the applicant has substantially more land development work to do that will generate excess fill. Initially, the developer anticipated that two 18 month windows would work to export the excess fill generated. Those two windows of opportunity have not been sufficient, however, due to a variety of factors which include: doing smaller phases and increments of development than originally anticipated, developing slower than anticipated, and having fewer sites to receive the fill than anticipated. Staff acknowledges that any large-scale project in Indian River County would probably take a long time (15-20 years) to build-out and would involve many phases of excavation and site work over a period of many years.

Even redesigning to have fewer lakes than originally planned, the Waterway Village project is generating more fill than initially estimated. As proposed, the LDR criteria will more evenly match the build-out process and pace the applicant (as well as other large new projects) has actually used in developing the project. The proposed amendment will allow excess fill material to be exported from each phase of the project within a window not to exceed 12 months and will tie export activity to an active land development permit authorizing site work for any given development phase.

- **Full-time Mining Operations**

Although substantive changes to local mining permit regulations were made in 2008, the time frames for full-time mining operations have not been reviewed or analyzed since the early 1990's. Since that time, the size and excavation/removal volume of local mining operations have generally increased. Local mines continue to supply general fill, various grades of sand, marl, coquina, lime rock, and to a small extent rock and require an increased amount of operating years compared to operations during the 1980s and 1990s. Under current regulations, the length of time a mine can be approved is tied to the volume of material to be removed. Currently, the maximum time frame allowed is 10 years for mining volumes approved for removing more than 500,000 cubic yards of fill. This time frame reflected typical mining operations at the time the table was adopted in the early 1990s, which usually consisted of a mine on a 40 acre parcel which would have a typical life cycle of 10 years or less. Due to the economies of scale, equipment types, mobilization, and mining methods, mining projects since the 1980s and 1990s have grown larger in size with corresponding increases in volume of material to be removed. The proposed amendment appropriately provides longer operational time frames for larger volume mines, as shown below.

Less than 10,000 cubic yards	1 year
10,000—99,999 cubic yards	2 years
100,000—500,000 cubic yards	5 years
Over 500,000 – <b><u>1,000,000</u></b> cubic yards	10 years
<b><u>1,000,000 – 2,000,000 cubic yards</u></b>	<b><u>15 years</u></b>
<b><u>Over 2,000,000 cubic yards</u></b>	<b><u>20 years</u></b>

**Note: Owners/operators of mining operations approved prior to adoption of the 15 year and 20 year time frames cited above may obtain a staff level approval to modify their mining operation time frames consistent with the time frames cited above, if the mining operation is in compliance with its County site plan approval, mining permit, and all jurisdictional agency permits related to the mining operation.**

The proposed time frames more accurately reflect the volumes of current mining operations. No changes are proposed for the current code allowance providing that time frames can be extended by the Board of County Commissioners (BCC) under certain circumstances such as economic downturns. Under the current code, if the time frame expires prior to completion of a mine, the operator would need to seek a new site plan approval for continuing the same operation. Under the proposed code amendments, a current mining operator's need for re-application would be a straight-forward staff-level approval for a mining operation being run "...incompliance with its County site plan approval, mining permit, and all jurisdictional agency permits relating to the mining operation". Thus, mining operations currently in compliance, as well as any applicant for a new mine, could take advantage of the extended time frames proposed (15 years or 20 years) and would have more certainty for setting-up a long term business plan.

In conclusion, based on the analysis provided, staff supports the request to modify time frames for exporting excess fill from large scale development projects and adjusting the time frames for large scale mining operations.

## **RECOMMENDATION**

Staff recommends that the Board of County Commissioners adopt the proposed ordinance.

## **ATTACHMENTS**

1. Application
2. Proposed Ordinance
3. Excerpt from Unapproved 10-11-18 PZC Minutes