

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA, CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENTS TO CHAPTER 934, EXCAVATION AND MINING; BY AMENDING SECTION 934.04, SUB-SECTION (7), EXCAVATION INCIDENTAL TO DEVELOPMENT PROJECTS; BY AMENDING SECTION 934.07(3), CONDITIONS OF THE MINING PERMIT; AND BY PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING PROVISIONS; INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRS) CHAPTER 934, EXCAVATION AND MINING, BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Section 934.04, “Exemption” by amending 934.04(7) “Excavation incidental to development projects”; as follows:

(7) *Excavation incidental to development projects.*

- (a) *Small-scale transfer of excess material.* Excavation incidental to any authorized Indian River County development order or permit, excluding permits for individual single-family homes and single-family ponds on individual lots or parcels, including approved site plans, subdivision plats, final development plans and/or building permits, shall be exempt if no more than five thousand (5,000) cubic yards of excavated materials are transferred from the project site. Prior to transfer of material from the project site, the project developer shall apply for and obtain a temporary use permit (TUP) from the community development director or his designee for such transfer of material. The authorized transfer of material from a development project site to adjacent right-of-way shall be considered the same as transfer of material within the boundaries of the development project site. Transfer of material off site shall occur within a continuous period ("window") of time not to exceed two (2) months and be limited to the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday. This paragraph shall not be construed to exempt excavation activities resulting in the creation of a waterbody from satisfying the littoral zone and water management standards of subsection 934.06(1).
- (b) *Medium-scale transfer of excess material.* For excavation incidental to authorized site plans, subdivisions, or planned developments, excavation material transferred from the project site may exceed five thousand (5,000) cubic yards, provided that:
 - 1. The extraction process and hauling of excavated materials from the project site is completed within a two (2) month continuous period of time beginning with the initial transfer of material off the development project site. The transfer of material off site shall not occur until a county land development permit has been issued, a land development permit waiver has been granted,

or a site plan has been approved and released. Such extraction and hauling is limited to occurring between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday;

2. Water depth within a created waterbody (as applicable) shall not exceed twelve (12) feet;
3. The provisions of subsection 934.07(5), pertaining to the posting of compliance and restoration security, are satisfied;
4. The provisions of section 934.08, pertaining to the hauling of excavated materials on public and private roads and the posting of road maintenance security, are satisfied;
5. The provisions of subsection 934.06(1), pertaining to littoral zone and water management standards for created waterbodies, are satisfied; and
6. No dewatering occurs within one thousand (1,000) feet of any platted subdivision that is not serviced by public water;
7. The project developer applies for and obtains an administrative site plan approval for the transfer of material off site.

(c) *Large-scale transfer of excess material.* Incidental to construction mining activity on projects, including project phases, over three hundred fifty (350) acres in size ~~may~~ **shall** be permitted ~~for up to eighteen (18) continuous months from the date of commencement of off-site hauling of excess material~~ **in conjunction with each land development permit issued for the project or for separate phases or sub-phases of the project,** if each of the following conditions is satisfied:

- That the project developer applies for and obtains site plan approval for the transfer of material off-site. The site plan application submitted for approval shall provide sufficient information to demonstrate compliance with all applicable Chapter [subsection] 934.04(7)(b) standards set forth above.
- That the quantity of excess fill produced by project construction and proposed to be hauled off site is the result of complying with water management or environmental requirements, or stormwater management improvements recommended by jurisdictional agencies.
- That the quantity of excess fill to be hauled off site requires more than two (2) months of excavation and hauling activity, and that the applicant has demonstrated that the requested timeframe ~~(up to eighteen (18) continuous months)~~ is necessary to haul the quantity of material involved.
- **That no fill is exported from the project site unless and until a land development permit is issued for the project and that permit specifies a**

timeframe for exporting excess fill off-site not to exceed a period of twelve (12) months from commencement of site work.

SECTION #2:

Amend LDR Section 934.07, “Mining permit and other regulations”, by amending 934.07(3), “Conditions of the mining permit”), as follows:

(3) *Conditions of the mining permit.*

- (a) Generally, the maximum project-site development phase for excavation pit activities shall not exceed twenty (20) acres. During transition from one phase to the next, two (2) phases may be active concurrently if security is posted for both phases in accordance with these mining regulations. No portion of a pit (lake) shall be required to be fully restored in accordance with the project's restoration plan until excavation of the entire pit (lake) has ceased.
- (b) No mining excavation shall occur within one hundred fifty (150) feet of a projected right-of-way line of any existing or proposed public road, nor within one hundred fifty (150) feet of the outer perimeter of the project property. Where a mining operation consists only of the removal of a mound and does not consist of lowering the elevation of ground below the neighboring property, an exception of the one hundred fifty (150) feet setback may be permitted at the time of site plan approval. In addition, the applicant shall satisfy the following:
 - 1. A three-hundred-foot setback from adjacent occupied structures (structures existing as of the date of site plan application for the mining project) to mining pits, on-site haul roads, and material stockpile areas.
- (c) All mining sites that exceed ten (10) acres in area shall be subject to the provisions of section 934.05, water management standards. Projects creating waterbodies must also provide a safety/security plan for the mining operation phase, including, but not limited to, fences and/or berms, access, control, and other security methods.
- (d) If the project site is of a size that falls below St. Johns River Water Management District permitting thresholds and is located (in whole or part) on the Atlantic coastal sand ridge, no excavation governed by a mining permit shall result in an average elevation of less than twenty-five (25) feet mean sea level (MSL) for that portion of the project site located on the sand ridge. Mining project sites that are large enough to fall within Saint Johns River Water Management District (SJRWMD) permitting requirements shall conform to SJRWMD permitting requirements concerning depth of mining and all other applicable SJRWMD permitting requirements.
- (e) If the project site is adjacent to a residential district or to an agriculturally-zoned parcel of ten (10) acres or less, the perimeter of the site adjacent to such an area shall include a fifty-foot wide bufferyard and a type "A" buffer or its equivalent along said site boundary.

- (f) No crusher, mixing plant, bin, tank, or structure directly involved in the production process shall be located less than:
 - 1. Six hundred (600) feet to any adjacent property zoned residential, or
 - 2. Six hundred (600) feet or twenty-five (25) percent of the project site width, whichever is less, to any adjacent property not zoned residential. In no case shall the setback to property not zoned residential be less than 250 feet.
- (g) No explosives or active chemical agents shall be used to extract or process materials on site.
- (h) The community development department shall issue a mining permit upon site plan and administrative permit approval, and a determination that all site plan release and applicable Chapter 934 requirements are satisfied for permit issuance.
- (i) Nothing herein shall be construed as a requirement that an operator of an existing sand mine shall cease operations until a mining site plan has been approved, provided a mining site plan has been previously approved and maintained.
- (j) Specific mining activity timeframes, from the date of initial mining permit issuance, are established based upon the estimated quantity of material to be removed. Excavation, hauling, or other mining activities occurring beyond these timeframes, (along with any approved extension requests) are prohibited **unless extended by the board of county commissioners as provided 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 <u>1,000,000</u> cubic yards	10 years
<u>1,000,000 – 2,000,000 cubic yards</u>	<u>15 years</u>
<u>Over 2,000,000 cubic yards</u>	<u>20 years</u>

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.

- 1. These timeframes may be extended by the board of county commissioners upon an applicant's request made prior to the normal timeframe expiration. The board may grant an extension if it determines that the mining operation has been inactive for a period of time due to market conditions such as an economic recession. The board shall not extend the initial timeframe by a period of time greater than the determined period of inactivity.

- (k) The mining site shall be restored in accordance with the approved restoration plan. Within five (5) months of the end of the approved timeframe (including any extension), the operator shall submit to the county a written notice stating that the mine is inactive and has been restored. Such notice shall be accompanied by two (2) signed and sealed as-built surveys of the site demonstrating substantial conformance with the approved project restoration plan. Restoration work shall then be inspected for compliance with the approved project restoration plan by county staff within six (6) months of the end of the approved timeframe (including any extension) for the mining operation. None of the security posted with the county in accordance with these mining regulations shall be returned unless and until the requirements of this subsection "(k)" are satisfied.

SECTION #3: SEVERABILITY

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #4: REPEAL OF CONFLICTING ORDINANCES

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #5: INCLUSION IN THE CODE OF LAWS AND ORDINANCES

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION #6: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the _____ day of _____, 2018, for a public hearing to be held on the _____ day of _____, 2018, at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted by the following vote:

Commissioner Susan Adams _____

Commissioner Joseph E. Flescher _____

Commissioner Peter D. O'Bryan _____

Commissioner Bob Solari _____

Commissioner Tim Zorc _____

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

The Chairman there upon declared the ordinance duly passed and adopted this _____ day
of _____, 2018.

BY: _____
Chairman

ATTEST: Jeffrey R. Smith, Clerk of Court and Comptroller

BY: _____
Deputy Clerk

This ordinance was filed with the Department of State on the following date: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Dylan Reingold, County Attorney

APPROVED AS TO PLANNING MATTERS

Stan Boling, AICP; Community Development Director