



**BOARD OF COUNTY  
COMMISSIONERS  
INDIAN RIVER COUNTY, FLORIDA  
COMMISSION AGENDA**

**SPECIAL CALL MEETING  
MONDAY, JANUARY 7, 2008 - 7:00 P.M.**

**County Commission Chamber  
Indian River County Administration Complex  
1801 27<sup>th</sup> Street, Building A  
Vero Beach, Florida, 32960-3388  
[www.ircgov.com](http://www.ircgov.com)**

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**COUNTY COMMISSIONERS**

**Sandra L. Bowden, Chairman  
Wesley S. Davis, Vice Chairman  
Joseph E. Flescher  
Peter D. O'Bryan  
Gary C. Wheeler**

**District 5  
District 1  
District 2  
District 4  
District 3**

**Joseph A. Baird, County Administrator  
William G. Collins II, County Attorney  
Jeffrey K. Barton, Clerk to the Board**

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- |           |   | <b><u>PAGE</u></b> |
|-----------|---|--------------------|
| <b>1.</b> | <b><u>CALL TO ORDER</u></b> <b><u>7:00 P.M.</u></b>   |                    |
| <b>2.</b> | <b><u>INVOCATION</u></b> Reverend Carol Trax<br>Community Church                                    |                    |
| <b>3.</b> | <b><u>PLEDGE OF ALLEGIANCE</u></b> William G. Collins II, County Attorney                           |                    |
| <b>4.</b> | <b><u>PUBLIC HEARING</u></b>  |                    |
|           | <b>A.</b> Mining Moratorium Ordinance<br>(memorandum dated December 28, 2007)<br><b>Legislative</b> | 3-12               |
| <b>5.</b> | <b><u>ADJOURNMENT</u></b>   |                    |

Anyone who may wish to appeal any decision which may be made at this meeting will need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal will be based.

Anyone who needs a special accommodation for this meeting may contact the County's Americans with Disabilities Act (ADA) Coordinator at (772) 226-1223 (TDD # 772-770-5215) at least 48 hours in advance of meeting.

The full agenda is available on line at the Indian River County Website at [www.irccgov.com](http://www.irccgov.com) The full agenda is also available for review in the Board of County Commission Office, the Indian River County Main Library, the IRC Courthouse Law Library, and the North County Library.

***Commission Meeting may be broadcast live by Comcast Cable Channel 27***

***Rebroadcasts continuously with the following proposed schedule:***

***Wednesday at 9:00 a.m. until 5:00 p.m.,***

***Thursday at 1:00 p.m. through Friday Morning,***

***and Saturday at 12:00 Noon to 5:00 p.m.***



Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

William G. Collins II, County Attorney  
William K. DeBaal, Deputy County Attorney  
Marian E. Fell, Assistant County Attorney  
George A. Glenn, Assistant County Attorney

**MEMORANDUM**

TO: The Board of County Commissioners  
FROM: *WGC* William G. Collins II – County Attorney  
DATE: December 28, 2007  
SUBJECT: Mining Moratorium Ordinance

On October 23, 2007 the Board of County Commissioners directed preparation of an ordinance to halt the acceptance, processing, and issuance of new mining permits in the unincorporated area of Indian River County. Moratoriums must be adopted by ordinance and after public hearing. Florida Statutes require one public hearing with ten days' notice, however case law in Florida has developed to hold that a moratorium is as significant an event as a rezoning and, thus, must be adopted with at least as much formality and due process as a rezoning. Florida Statutes on rezonings initiated by the County involving more than 10 acres require two advertised public hearings.

The Professional Services Advisory Committee considered this moratorium on December 6, 2007 inconclusively, i.e., no motion was passed, although two were proposed to exempt three mining applications currently being processed.

APPROVED FOR 1-7-08  
B.C.C. MEETING Public Hearing  
*WGC*  
COUNTY ATTORNEY

| Indian River Co | Approved   | Date     |
|-----------------|------------|----------|
| Admin.          | <i>WGC</i> | 1/2/08   |
| Legal           | <i>WGC</i> | 12/28/07 |
| Budget          | —          | —        |
| Dept.           | <i>AMK</i> | 1/2/08   |
| Risk Mgr.       | —          | —        |

The Planning and Zoning Commission considered this moratorium on December 13, 2007 and, by a 6-to-0 vote, recommended passage of the mining moratorium, and further recommended the following exemptions:

- A. Annual renewals of operating permits for existing approved mines, as of the effective date of this ordinance.
- B. Two month "incidental to construction," Monday through Friday off-site haul mining permits pursuant to Indian River County Code Section 934.04(7)(b)1.
- C. Existing operating mines involved in the completion of State Road 60 four-laning west of Interstate 95.
- D. Staff level administrative approvals for minor changes to existing operating mines, including but not limited to on-site moves of construction trailers and changes to haul routes.

This exemption D shall not include expansions to the acreage excavated nor the area of development of existing operating mines.

The exemptions B and D recommended by the Planning and Zoning Commission have been modified in the attached ordinance. The staff felt changes in haul routes may be a topic of changes during the moratorium, and now recommend limiting staff authority to change haul routes. (D above.)

The 2-month "incidental to construction" exemption (B above) has been revised to include all activities currently exempted by Code section 934.04 (see attachment).

County staff has contacted the Florida Department of Transportation requesting any information they may provide for the Board's consideration, regarding the effect this ordinance would have on the

availability, transportation and potential extraction of construction aggregate materials on the local area, region and the state, as required by F.S. 337.0261(3). Any information provided by FDOT will be presented by County staff at the Board of County Commissioners' public hearing.

**RECOMMENDATION:**

Open the public hearing and receive input on the proposed mining moratorium; make desired revision, if any, and adopt the ordinance.

WGC/nhm

Attachment: mining moratorium ordinance  
Section 934.04 - Exemptions

ORDINANCE NO. 2008-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, IMPOSING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS AND PROCESSING OF APPLICATIONS FOR MINING ADMINISTRATIVE PERMIT APPROVALS AND ISSUANCE OF MINING PERMITS; PROVIDING FOR PROHIBITION; PROVIDING FOR EXEMPTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; SETTING FORTH EFFECTIVE AND EXPIRATION DATES.

**WHEREAS**, pursuant to Section 1(f), Article VIII, of the Florida Constitution and Chapter 125, Florida Statutes, Indian River County is authorized and required to protect the public health, safety and welfare and may exercise any power for governmental purpose except when expressly prohibited by law; and

**WHEREAS**, pursuant to Section 163.3202, Florida Statutes, Indian River County has enacted land development regulations, consistent with its adopted comprehensive plan, which protect the quality of life in Indian River County; and

**WHEREAS**, the Board of County Commissioners has adopted Indian River County Code Chapter 934, Excavation and Mining; and

**WHEREAS**, at its October 23, 2007 meeting the Board of County Commissioners was advised of numerous traffic hazards and accidents involving mining trucks on unpaved haul routes; and

**WHEREAS**, the Board has determined improvements must be made to the notice and traffic safety provisions of Chapter 934; and

**WHEREAS**, the Planning and Zoning Commission considered this matter and made a recommendation of approval of a mining moratorium on December 13, 2007; and

**WHEREAS**, the Board of County Commissioners has held two public hearings on this proposed moratorium on mining and heard public input;

**WHEREAS**, the Board of County Commissioners wishes to maintain the status quo with respect to mining activity during the drafting process to ensure that the community's notice and traffic safety problems are addressed through this ordinance

rather than exacerbated during the time it takes to formulate any desired modifications to the excavating and mining ordinance; and

**WHEREAS**, the Board of County Commissioners has considered any information provided by the Florida Department of Transportation regarding the effect this ordinance would have on the availability, transportation and potential extraction of construction aggregate materials on the local area, region and the state, as required by Florida Statute 337.0261,

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, that:**

**SECTION 1. PROHIBITION**

No applications for mining administrative permit approvals shall be accepted or processed, and no mining permits shall be issued until July \_\_, 2008.

**SECTION 2. EXEMPTIONS**

The prohibitions of Section 1 above shall not apply to the following:

- A. Annual renewals of operating permits for existing approved mines, as of the effective date of this ordinance.
- B. All activities currently exempted by by Indian River County Code Section 934.04 "Exemptions".
- C. Existing operating mines involved in the completion of State Road 60 four-laning west of Interstate 95.
- D. Staff level administrative approvals for minor changes to existing operating mines, including but not limited to on-site moves of construction trailers.

This exemption D shall not include expansions to the acreage excavated nor the area of development of existing operating mines nor changes to approved haul routes.

**SECTION 3. CONFLICTS**

The application of any Indian River County ordinance in conflict herewith is hereby suspended during the time period set forth in Section 1 to the extent of such conflict.

**SECTION 4. SEVERABILITY**

If any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

**SECTION 5. EFFECTIVE DATE**

This ordinance shall take effect upon filing with the Secretary of State.

**SECTION 6. EXPIRATION DATE**

This ordinance shall expire July \_\_, 2008, unless earlier terminated or further extended by ordinance.

This ordinance was advertised in the Vero Beach Press-Journal on the 8th day of December, 2007, for a public hearing to be held on the 18th day of December, 2007, and was advertised in the Vero Beach Press-Journal on the 31st day of December, 2007 for a public hearing to be held on the 7th day of January, 2008 at which time it was moved for adoption by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and adopted by the following vote:

|                                 |       |
|---------------------------------|-------|
| Sandra L. Bowden, Chairman      | _____ |
| Wesley S. Davis, Vice Chairman  | _____ |
| Commissioner Joseph E. Flescher | _____ |
| Commissioner Gary C. Wheeler    | _____ |
| Commissioner Peter D. O'Bryan   | _____ |

The Chairman thereupon declared the ordinance duly passed and adopted this \_\_\_\_ day of \_\_\_\_\_, 2008.

BOARD OF COUNTY COMMISSION  
INDIAN RIVER COUNTY, FLORIDA

By: \_\_\_\_\_  
Sandra L. Bowden, Chairman

ATTEST: Jeffrey K. Barton, Clerk

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY William G. Collins II  
WILLIAM G. COLLINS II  
COUNTY ATTORNEY



ORDINANCE NO. 2008-\_\_\_\_\_

ACKNOWLEDGMENT by the Department of State of the State of Florida, this \_\_\_\_ day  
of \_\_\_\_\_, 2008.

#### **Section 934.04. Exemptions.**

The following activities shall be exempted from the permitting requirements of this chapter, except as specifically indicated:


- (1) Agricultural use projects, including agricultural drainage canals, and irrigation work incidental to agricultural operations and stock watering ponds, provided that:
  - (a) The property is agriculturally zoned, or if the property is not so zoned, the agricultural use project is allowed in accordance with Chapter 904, Nonconformities, of the county land development code;
  - (b) No excavated material is removed from the subject property;
  - (c) No excavation shall take place within fifty (50) feet of the property line; however, a ditch or canal may be excavated within fifty (50) feet of or along the property line, if written approval is obtained from affected property owners; and
  - (d) Wetlands are protected from the excavation activity, in accordance with the provisions of this chapter.
- (2) Earth moving in conjunction with the installation of a utility, wherein the excavation is to be backfilled.
- (3) Construction of state, federal, or local public roads and public works within the limits of public property.
- (4) Graves.
- (5) Approved sanitary landfills.
- (6) Any activity regulated by the Florida Electrical Power Plant Siting Act and the Transmission Line Siting Act (Part II, Chapter 403, F.S.) to the extent that the provisions of this chapter are pre-empted by said Acts. Maintenance activities undertaken by a public utility as defined in Section 366.02, Florida Statutes (1983) with regard to existing electrical power plants, their reservoirs and other related facilities.
- (7) Excavation incidental to development permits.
  - (a) Excavation incidental to any authorized Indian River County development order or permit, including approved site plans, subdivision plats, final development plans and/or building permits, whereby no more than five thousand (5,000) cubic yards of excavated materials are removed from the premises. This paragraph shall not be construed to exempt excavation activities resulting in the creation of a waterbody from satisfying the water management standards of section 934.05 of this chapter.
  - (b) For excavation incidental to authorized site plans, subdivisions, or planned developments, excavation material removal from the premises may exceed five thousand (5,000) cubic yards, provided that:

1. The extraction process and hauling of excavated materials from the premises is completed within two (2) months of commencement of project construction, following the issuance of a county land development permit or release of an approved site plan, as applicable, and provided that 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 section 934.07(5) are satisfied, pertaining to the posting of compliance and restoration bonds;
4. The provisions of section 934.09 are satisfied, pertaining to the hauling of excavated materials on public and private roads;
5. The provisions of section 934.05 are satisfied, pertaining to water management standards for created waterbodies; and
6. No dewatering occurs within one thousand (1,000) feet of any platted subdivision that is not serviced by public water;
7. Incidental to construction mining activity on projects over three hundred fifty (350) acres in size may be permitted for a total of up to eighteen (18) months from the date of commencement of construction of the project's water management system, if each of the following conditions is satisfied as determined by the public works director and the community development director:
  - That a site plan application is submitted which provides sufficient information to demonstrate compliance with all applicable Chapter 934.04(7)(b) standards.
  - 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 recommendations from jurisdictional agencies.
  - That the quantity of excess fill to be hauled off-site requires more than two (2) months of excavation and hauling activity. An initial permit allowing four (4) months of mining and hauling activity may be issued by county staff. An initial extension of six (6) months, a second extension of four (4) months, and a third extension of four (4) months, may be granted by staff if the applicant has demonstrated compliance with county mining regulations for the initial period(s) of mining activity and if the applicant demonstrates that the requested extension(s) is (are) necessary to excavate and haul the quantity of material involved.
  - As a condition of site plan approval for an incidental to construction mining operation conducted under this subsection [934.04(7)(b)7.], the public works director may require public road

repair work or funds or security to guarantee such work, representing an amount of up to twenty thousand dollars (\$20,000.00). The public works director may adjust this amount for inflation, with 1996 as the base year.

- (8) Maintenance dredging of lakes or canals.
- (9) A pond or ponds on a single-family residential lot, provided that:
  - (a) The total surface area of the pond or ponds is not greater than one-half (1/2) acre in size or thirty-five (35) percent of the lot, whichever is more restrictive;
  - (b) No excavation takes place within fifty (50) feet of the lot property line. Notwithstanding, in cases where the pond is necessary to meet stormwater management cut and fill balance requirements, said setback may be reduced to twenty-five (25) of parcel width perpendicular to a given lot line, as applicable;
  - (c) The excavation does not disturb any existing wetland;
  - (d) Pond depth does not exceed twelve (12) feet;
  - (e) Side slopes are not greater than one foot vertical to four (4) feet horizontal;
  - (f) There will be no hauling of excavated material from the property, unless the excavation is conducted to satisfy cut and fill balance requirements for stormwater management purposes, as verified by the county engineer, provided removal of excavated material off-site is the minimum necessary to satisfy said requirements;
  - (g) It is demonstrated that the pond excavation is the minimum necessary to satisfy the intended use of fill on-site, as applicable; and
  - (h) A pond permit is obtained from the county planning division, including the posting of a five hundred dollar (\$500.00) bond to be returned upon verification by county staff that the above criteria have been satisfied.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 96-6, § 22, 2-27-96; Ord. No. 98-9, § 1, 5-19-98)



Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

STEPHANIE C. KOPELOUSOS  
SECRETARY

January 2, 2008

JAN 4 2008

George A. Glenn, Esquire  
Assistant County Attorney  
Board of County Commissioners  
Office of County Attorney  
1801 27th Street  
Vero Beach, Florida 32960-3365

Re: Sand and Rock Mining Moratorium

Dear Mr. Glenn:

Thank you for your request for information regarding the six-month mining moratorium Indian River County is considering.

At 5:00 p.m. on July 17, 2007, three of the largest limestone mines in Florida ceased their operations pursuant to an order issued by the U.S. District Court for the Southern District of Florida. This order emanated from a permitting matter which is currently pending before the U.S. Court of Appeals for the Eleventh Circuit in a case styled Sierra Club v. Robert B. Flowers, Case No. 07-13297-FF. The affected mines are located in the Lake Belt region of Miami-Dade County and had they remained in operation they would have been expected to produce some twenty million tons of limestone in the twelve months following the court-ordered closure.

The loss of this anticipated production is of grave concern to the Department in light of the fact that it will result in approximately a 20 percent aggregate shortfall for Department uses. While the precise effects of this shortfall in aggregate supply has not yet been determined, it is safe to say that it will produce costly delays, stop-work situations, and the deference or outright cancellation of Department projects throughout the State which will in turn translate into safety and efficiency issues for the traveling public as well as negative economic impacts for the State as a whole. Similar concerns were expressed by the Legislature in Section 337.0261(2), Florida Statutes (2007). The Legislature found that "there is a strategic and critical need for an available supply of construction aggregate materials within the state and that a disruption of the supply would cause a significant detriment to the state's construction industry, transportation system, and overall health, safety, and welfare."

George A. Glenn, Esquire  
Assistant County Attorney  
Board of County Commissioners  
January 2, 2008

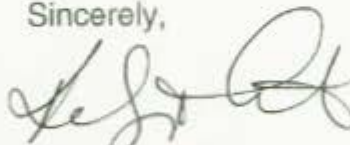
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To address these concerns, the Legislature imposed restrictions on local governments' ability to impose mining moratoria, provided for expedited permitting, and created the Strategic Aggregates Review Task Force (SARTF). The SARTF was charged with the duty to evaluate the availability and disposition of construction aggregate materials and related mining and land use practices in the State, and must report its findings to the Governor and the Legislature by February 1, 2008.

Inasmuch as the ultimate outcome of the Lake Belt litigation could result in a substantial reduction, if not complete termination of mining in the region, the Department must develop new sources of limestone aggregate to ensure its ability to meet its obligation to maintain and improve Florida's transportation system. The enactment of the six-month moratorium the Board is considering could impose a significant delay in the Department's efforts to develop alternate sources of supply in Indian River County. Accordingly, the Department would request the Board to refrain from taking any action on a moratorium on rock or sand mining until it has had an opportunity to review the SARTF report. The Department believes that such an approach will enable the Board to strike a proper balance between environmental concerns and the needs of the traveling public.

If you have any additional questions or concerns please contact me at your convenience.

Sincerely,



(For)

Ananth Prasad, P.E.  
Chief Engineer

AP/pfc