



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

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

MEMORANDUM

TO: The Planning and Zoning Commission

FROM: For William G. Collins II – County Attorney *WGC*

DATE: May 15, 2008

SUBJECT: Draft Mining Moratorium Ordinance Extension

On April 22, 2008, the Board of County Commissioners authorized the County Attorney's Office to initiate the process of extending the mining moratorium up to an additional six months. Some, but not all workshops have been held. It is clear no new mining regulations will have been considered for adoption prior to the moratorium's expiration on July 10, 2008.

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. One must be held after 5:00 p.m. on a weekday, and the second must be held at least ten days after the first hearing. Because case law treats moratorium in the same manner as rezonings in terms of process, this matter is presented to the Planning and Zoning Commission for a recommendation, just as a rezoning application would be presented

to the Planning and Zoning Commission for a recommendation to the County Commission under the provisions of the Indian River County Code.

The Professional Services Advisory Committee considered this matter on May 15, 2008 with the following results:

1. A motion to continue the mining moratorium died for a lack of second.
2. A motion to make no recommendation was approved by a 5-to-2 vote.

RECOMMENDATION:

Open the public hearing, receive input and make recommendation to the Board of County Commissioners on the proposed mining moratorium ordinance extension.

WGC/nhm

Attachment:

draft mining moratorium ordinance extension

cc: Joseph A. Baird – County Administrator
George Glenn – Assistant County Attorney

DRAFT

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, EXTENDING BY SIX MONTHS TO JANUARY 10, 2009 THE 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 held two public hearings on a proposed moratorium on mining, heard public input, and adopted Ordinance No. 2008-001 on January 7, 2008, effective January 10, 2008; and

WHEREAS, holding workshops with stakeholders and drafting amendments has proven to be challenging and additional time is needed before any amended ordinance is ready to be brought before the various committees and Board of County Commissioners; and

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

WHEREAS, the Board desires to extend the moratorium put in place on January 10, 2008, for an additional six months; 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 January 10, 2009.

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 January 10, 2009, unless earlier terminated by ordinance.

This ordinance was advertised in the Vero Beach Press-Journal on the ___ day of _____, 2008, for a public hearing to be held on the ___ day of _____, 2008, and was advertised in the Vero Beach Press-Journal on the ___ day of _____, 2008 for a public hearing to be held on the ___ day of _____, 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.