

Board of County Commissioners
Consideration of Amendments to
Mining Regulations in LDR
Chapters 911, 934 and 971

DECEMBER 8, 2008

- Moratorium on accepting or processing applications for new mines
 - Address nuisance problems and environmental concerns
- Began January 7, 2008
- Ends January 7, 2009
- Cannot be extended
 - Statewide “aggregate crisis”

- PZC and staff charged with researching issues, reviewing and work-shopping mining regulations
- PZC and staff conducted 1 background meeting, 1 mobile workshop, and 4 public workshops on environmental, traffic/nuisance, compatibility/notice, compliance/enforcement
- PZC made 38 recommendations for mining regulation changes

- PZC recommendations presented to BCC September 16th and October 6th
- BCC agreed in concept to most of PZC's recommendations, with adjustments
 - November 4th: advertise to allow special exception as an option
- Draft ordinance based on BCC's direction, with some changes recommended by PSAC

- LDR amendment timeline
 - October 23rd PSAC
 - November 19th PZC special hearing 7:00 pm
 - December 8th BCC 5:01 pm
 - December 19th BCC second hearing if needed

WORKSHOP ITEMS

- Input from experts, residents, the general public, industry representatives
 - AAC
- IRC geology: recoverable materials, confining layer
- IRC mining: materials, scale, unique duration (10 years)
- Primary nuisance related to haul truck traffic
- Compliance and enforcement need more teeth

WORKSHOP ITEMS (cont'd)

- Rely on agency expertise but assist with data and monitoring (accept agency format).
- Continue to allow in AG-1, AG-2, and AG-3 areas with special regulations. Factors:
 - what's worked,
 - logistics/costs/impacts,
 - takings challenges.
- Special exception vs. administrative permit with special notice and appeal option.

DRAFT REGULATION CHANGES

- “Non-workshop” changes
 - Incidental to construction (small, medium, and large)
 - Clarify timeframes and procedures
 - Retain basic requirements (specific to size)
 - Single family ponds
 - Retain as “accessory”, no fill off-site
 - Allow pond larger than ½ acre if needed for on-site fill

DRAFT REGULATION CHANGES (cont'd)

- “Workshop” changes
 - Pre-existing mining operations: continue; subject to annual permit, compliance/enforcement, site restoration regulations
 - If new security, follow security criteria
 - New mining operations must follow all regulations
 - New mining operations, including pending applications “in the pipeline”...

- Procedural Sequence
 - (a) Discussion or “pre-application” meeting with SJRWMD.
 - (b) Traffic impact methodology meeting with Public Works/Traffic Engineering.
 - (c) Site plan pre-application conference.
 - (d) Formal site plan submittal.
 - (e) Initial TRC review.
 - (f) Final TRC review.

- Procedural Sequence (cont'd)

- (g) Planning & Zoning Commission hearing.

- 1. Potential appeal to BCC (if AP use)

OR

- 2. Board of County Commissioners hearing (if special exception use)

- (h) Initial annual mining permit.

- 1. Annual dry season and wet season inspections

- (i) “Pre-construction”/site work meeting with staff.

- (j) Annual mining permit renewal.

- (k) Site restoration and final inspection/close-out.

- Mining site plan submittal requirements
 - ❖ Groundwater and environmental: centered on SJRWMD, NPDES, DOH
 - ❖ Baseline data
 - ❖ Hydrology report specifications
 - County authorized to charge applicants for county-hired expert (not to exceed \$10,000)
 - PZC Alternative: SJRWMD Permit
 - ❖ Ensure county site plans/permit drawings meet agency requirements
 - ❖ Infrastructure impacts identified/evaluated up front
 - ❖ Tied to initial submittal or re-submittal

- Special standards
 - ❖ Excavation above confining layer
 - ❖ Deep wells: upgrade, plug, setback
 - ❖ Setbacks from preserved on-site/off-site wetlands, uplands; shallow aquifer public wells
 - ❖ No blasting or active chemical agents
 - ❖ Noise and dust control/bmps
 - ❖ Hours of operation next to ranchettes (existing) applied east of I-95

- Traffic

- ❖ Haul route defined (from site to paved major intersection)
- ❖ Unpaved routes 24' wide, 12" gradable base
- ❖ Paved routes 24' wide, county major road specifications
- ❖ Pave if averaging over 500 haul truck trip ends/day (500 AADT), regardless of location

- Traffic (cont'd)

- ❖ Evaluate haul route and intersection LOS using PCEs for haul trucks

- Uses AADT; 15% peaking factor

- ❖ Limit frequency of haul trucks on two lane haul routes:

- Each mine: 120 trip ends/day (60 outbound/60 inbound)

- Allow exceptions for special/large deliveries with MOT plan

- Haul route: cumulative not to exceed 240 trip ends/day

- Compliance & Enforcement
 - ❖ Pre-construction meeting
 - ❖ Updated site plan/sketch at time of annual permit renewal
 - ❖ Wet season and dry season inspections (fee from \$62 to \$360 per year)
 - ❖ Security: updated cost estimates for restoration vs. fixed rate per acre
 - Same form as subdivision maintenance security (cash, escrow deposit, loc, bond AM Best A-VI)

- Compliance & Enforcement (cont'd)

- ❖ Road maintenance bond forfeited to cover county cost to fix road
 - Forfeited if road not fixed within 3 working days of written notice from Public Works
- ❖ Potential violation with immediate correction: no penalty
- ❖ Not corrected immediately but corrected before compliance date: “Formal Resolved Violation”
- ❖ 5 or more Formal Resolved Violations in 1 year: BCC penalty determination hearing
- ❖ Failure to correct any 1 violation by compliance date: BCC penalty determination hearing

BCC Penalty Determination Hearing

- 10 days notice to adjacent property owners, mine owner, mine operator
- BCC hears evidence and considers:
 - Operator/owner responsiveness to correct violation
 - Severity of violation and negative impacts
 - Number of violations
- For life of mining operation (10 years)
 1. First penalty hearing: forfeit compliance security up to \$25,000
 2. Second penalty hearing (penalty previously imposed) forfeit compliance security no limit
 3. Third penalty hearing (penalties imposed at 2 previous meetings) forfeit compliance, road maintenance, restoration security and terminate mining permit

- Compliance & Enforcement (cont'd)
 - ❖ Traffic moving violations for truck drivers constitutes a Formal Unresolved Violation (“5 strikes”) (This provision is subject to legal opinion)
 - ❖ BCC can require “penalty” of operator to contract for special traffic law enforcement on his haul route

- 971 Changes

OPTION

- ❖ Remains Administrative Permit Use with expanded notice, public input at PZC
- OR
- ❖ Changed to special exception use: PZC and BCC public hearings, special exception standard of review
- ❖ Clarify mining site access (major road or local road/driveway with user approval)

OTHER ITEMS

- ❖ Sites in AG-1, AG-2, or AG-3 only
- ❖ Special and expanded notice:
 - ½ mile of project site
 - All along proposed haul route in both directions

**Proposed Mining Regulation Amendments:
Implementation of Planning & Zoning Commission 38 Recommendations**

PZC Recommendation	Addressed in Proposed Ordinance
•Surface Waters/Discharge	
1. Require pollution prevention plan/use of bmps	<ul style="list-style-type: none"> •934.05(1)(c): Pollution prevention plan specifications established, use of bmps required. •County bmp list created (attachment #9).
2. Require baseline data on water quality	<ul style="list-style-type: none"> •934.05(1)(a) and 934.06(1)(a): Upfront coordination with SJRWMD required: water quality standards and regulation deferred to SJRWMD
3. Monitor discharge quality	<ul style="list-style-type: none"> •934.06(2)(h): SJRWMD discharge and monitoring requirements noted on site plans. Site plan and pollution prevention plans enforced by county staff.

PZC Recommendation	Addressed in Proposed Ordinance
•Surface Waters/Discharge (cont'd)	
4. Require baseline data on surrounding wetlands and vegetation	•934.05(1)(n): Baseline observation data required. Jurisdictional and county wetlands assessment requirements applied through site plan process.
5. Require applicant to demonstrate no adverse impacts on wetland hydroperiods	•934.06(3)(e): Demonstrating no adverse impacts on plans required; maintaining hydroperiods required.

PZC Recommendation	Addressed in Proposed Ordinance
•Groundwater/hydrology	
6. Require hydrology report	<ul style="list-style-type: none"> •934.05(1)(d): Report required to be submitted and certified by state certified professional engineer or geologist. •934.05(1)(h) Authorizes county to charge applicants to pay cost of county-hired professionals to review project hydrology reports.
7. Establish hydrology report specifications	<ul style="list-style-type: none"> •934.05(1)(d): Detailed report specifications established, baseline data.
8. Require that site plans reflect hydrology report recommendations and bmps	<ul style="list-style-type: none"> •934.05(1)(e): Requires written description of how report recommendations and bmps are incorporated into plans. •934.05(1)(h) Requires plans to incorporate recommendations and bmps.
9. Require submittal of hydrology report to agencies	<ul style="list-style-type: none"> •934.05(1)(e): Requires date of report submittal to SJRWMD noted on the site plan.

PZC Recommendation	Addressed in Proposed Ordinance
<p>•Groundwater/hydrology (cont'd)</p>	
<p>10. Establish monitoring report specifications</p>	<p>•934.07(2)(d): Establishes monitoring data and data evaluation requirements for annual mining permit renewal requests.</p>
<p>11. Require testing for soils contamination</p>	<p>•934.05(1)(f): Soils testing required if need is determined by Health Department. •934.06(3)(g): Requires contaminated soils to be handled as directed by Health Department.</p>
<p>12. Require applicant to identify, characterize underlying confining layer (e.g. Hawthorne group “aquiclude”)</p>	<p>•934.05(1)(d): Hydrology report required to identify general depth and thickness of confining layer, as well as depth of proposed excavation and any well-drilling activities.</p>

PZC Recommendation	Addressed in Proposed Ordinance
<p>•Groundwater/hydrology (cont'd)</p>	
<p>13. Require applicant to identify and properly address on-site wells</p>	<ul style="list-style-type: none"> •934.05(1)(g): Requires on-site well depth, location, condition data on plans. •934.06(3)(c)and (d): Require deep wells to be plugged or upgraded. Also requires setback of 30' from plugged or unplugged deep well to all on site activities.
<p>14. Require site plans to reflect agency permit requirements</p>	<ul style="list-style-type: none"> •934.05(1)(e): Requires description of how site and permit plans satisfy agency requirements.
<p>15. Establish special setbacks from wetlands, native uplands, public conservation areas</p>	<ul style="list-style-type: none"> •934.06(3)(d): Establishes setbacks for deep wells, wetlands, native uplands, conservation lands, city/county potable water surficial wells.

PZC Recommendation	Addressed in Proposed Ordinance
<p>•Groundwater/hydrology (cont'd)</p>	
<p>16. Prohibit contact/penetration of confining layer</p>	<p>•934.06(3)(b): Requires excavation activity above confining layer.</p>
<p>17. Prohibit blasting, use of active chemicals for extraction</p>	<p>•934.07(3)(g): Prohibitions established.</p>
<p>18. Establish special setback to public potable water supply wells</p>	<p>•934.06(3)(d): Setback established; matches public water supply well setback in existing comprehensive plan policy.</p>

PZC Recommendation	Addressed in Proposed Ordinance
•Traffic & Nuisance	
19. Require dust control plan	<ul style="list-style-type: none"> •934.05(1)(c): Requires erosion control. •934.05(1)(i): Requires a comprehensive dust and spillage control plan.
20. Clarify 20 acre phase requirement	<ul style="list-style-type: none"> •934.07(3)(a): Retains 20 acre phase maximum, clarifies that active pit excavation area cannot exceed 20 acres, and clarifies existing allowance for transitioning between phases if security is posted for both phases.
21. Require noise modeling that demonstrates compliance with Chapter 974 noise standards	<ul style="list-style-type: none"> •934.05(1)(j): Requires noise modeling that demonstrates compliance with Chapter 974 standards. •934.06(4)(a): Requires satisfaction of Chapter 974 standards and allows for normal operation of vehicles.

PZC Recommendation	Addressed in Proposed Ordinance
<p>•Traffic & Nuisance (cont'd)</p>	
<p>22. Require noise-producing equipment to be baffled or placed behind berm/placed below ground level</p>	<p>•934.06(4)(a): Requires pumps, crushers, and processing equipment to be placed behind berms or below ground level, or equipped with mufflers or similar devices.</p>
<p>23. Specify practices that prevent tracking and spillage</p>	<p>•934.05(1)(i): Requires dust and spillage control plan to include methods that prevent tracking and spillage.</p>
<p>24. Establish road surface protections and maintenance standards</p>	<p>•934.08(2): Retains County Engineer authority to require use of devices or improvements that protect pavement edges, curbs, entrances/exits. •934.06(4)(e): Establishes improvement/maintenance standards for unpaved haul routes. Addresses vibration concerns. Standards were developed by Public Works.</p>

PZC Recommendation	Addressed in Proposed Ordinance
<p>•Traffic & Nuisance (cont'd)</p>	
<p>25. Require maintenance agreements on shared routes</p>	<p>•934.06(4)(i): Requires improvement and maintenance plan that addresses shared responsibilities on shared haul routes.</p>
<p>26. Establish haul route paving thresholds</p>	<p>•934.06(4)(f): Establishes haul route paving threshold based on amount of haul truck traffic; establishes paving standards. Threshold and standards were developed by Public Works.</p>
<p>27. Specify haul route criteria and evaluation of haul route adequacy</p>	<p>•934.06(4)(d): Establishes haul route criteria/definition and provides authority for Public Works to determine the haul route. •934.06(4)(g): Establishes special LOS evaluation methodology and LOS requirement for haul truck traffic on haul routes and at significantly impacted intersections. Criteria/definition and LOS standards/methodology were developed by Public Works.</p>

PZC Recommendation	Addressed in Proposed Ordinance
<p>•Traffic & Nuisance (cont'd)</p>	
<p>28. Specify penalties for truck driver violations</p>	<p>•934.09(d): Establishes haul truck driver traffic citations on the haul route as violations against the mining operation served. Penalties for accumulated violations specified in 934.09.</p>
<p>29. Require up-front assessment of haul route bridge/culvert impacts</p>	<p>•934.06(1)(b): Requires an early traffic impact methodology meeting with Public Works.</p> <p>•934.05(1)(k): Requires evaluation of bridge/culvert impacts on haul route as directed by Public Works in the traffic impact meeting.</p>
<p>30. Require annual reports to document compliance with site plan conditions and bmps</p>	<p>•934.07(4)(d): Requires applicant's annual reports to verify compliance with site plan and all permits, include monitoring data, and include monitoring summary and description of any instances of non-compliance.</p>

PZC Recommendation	Addressed in Proposed Ordinance
<p>•Traffic & Nuisance (cont'd)</p>	
<p>31. Consider limiting total amount of truck traffic, and limiting frequency of truck traffic to ensure “gaps” and prevent back-ups at haul route intersections</p>	<ul style="list-style-type: none"> •934.06(4)(g): Establishes LOS standard which limits total peak truck traffic on haul routes and at significantly impacted intersections. •934.06(4)(h): Establishes peak frequency of trips for individual mining operations and cumulatively on shared haul routes. Frequency standards apply only to two-lane haul routes. Limitation standards were developed by Public Works.

PZC Recommendation	Addressed in Proposed Ordinance
<p>•Compatibility & Notice</p>	
<p>32. Restrict mining to AG-1, AG-2, and AG-3</p>	<p>•971.22(1)(b)6: Restricts mining to AG-1, AG-2, and AG-3 designated properties.</p>
<p>33. Re-classify mines from administrative permit to special exception use</p>	<p>Based on recent direction from the BCC, two versions of the ordinance are proposed.</p> <p>ORD 1: • 911.06 and 971.22 require special exception approval.</p> <p>ORD 2: • 971.22 requires special administrative permit process that mandates special notice and public input at PZC.</p>
<p>34. Require expanded notice: ½ mile from mining site and along haul route</p>	<p>•971.22(1)(b)7: Requires special notice in both versions of the ordinance.</p>

PZC Recommendation	Addressed in Proposed Ordinance
•Compliance & Enforcement	
35. Increase formal site inspections and mining permit fees	Addressed in attached fee resolution (see attachment #15). Not necessary to include site inspection fees in ordinance. <ul style="list-style-type: none"> •934.05(1)(h): Authorizes county to charge applicants for county-hired experts to review project hydrology reports.
36. Establish clear security forfeiture process with progressive penalties up to termination of mining permit	<ul style="list-style-type: none"> •934.08(3)(a): Establishes process for forfeiting road maintenance security. •934.09: Establishes detailed procedure for progressive penalties for violations.

PZC Recommendation	Addressed in Proposed Ordinance
37. Consider requiring enhanced traffic law enforcement and use of GPS monitoring	●934.09(1)(d): Authorizes BCC to assess mining operators the cost to the county to hire contract traffic law enforcement. Based on BCC direction, no GPS monitoring requirements are proposed.
38. Review and update, if needed, the formula for compliance and restoration security amount	●934.07(5): Compliance security formula clarified to cover all on-site (cleared) activity areas. Restoration bond formula changed to be based on 125% of engineer's cost estimate, updated every 3 years during life of mine. Road maintenance security calculation remains unchanged (updated 2007).

Changes to Proposed Mining Ordinances Made after
November 19, 2008
Planning & Zoning Commission Hearing

1. Added language to 934.06(4)(e) to define “suitable road base material” for unpaved roads.
Basis: PZC recommendation
2. Clarified 934.07(3)(a) that the 20 acre phase regulations do not require full restoration of pit areas until project site restoration.
Basis: PZC recommendation
3. Added language to 934.07(3)(f) to adjust the crusher equipment setback regulation for smaller sites but retain existing absolute minimum of 250 feet.
Basis: Staff was recently made aware of the need to adjust new regulations for smaller sites (e.g. 40 acre sites); noise and dust requirements also apply.

4. Added language to 934.07(1) and 934.07(4)(d)1 to clarify that an initial mining permit is required prior to commencement of mining-related activity and that the annual mining permit renewal must be obtained by November 1st (each year) unless an extension of time is granted for reasonable cause.
Basis: PZC recommendation

5. Added language to 934.07(4)(a) to apply limited hours of operation to projects with sites **or haul routes** east of I-95.
Basis: PZC discussion

6. Added language to 934.09(1)(c)3 & 4 to state that progressive penalties are assessed only if the Board of County Commissioners (BCC) has imposed penalties at a previous penalty determination hearing.
Basis: PZC recommendation

7. Added language to 934.09(1)(d) to state that traffic violations considered at penalty hearings are **moving** violations rather than non-moving violations such as having a headlight out.

Basis: PZC discussion

8. Revised language in 971.22(1)(b)7 to provide notice to owners of **all** properties that front on the proposed haul route.

Basis: PZC recommendation

PZC recommendations not agreed to by staff:

- Changing/eliminating options to mitigate noise from equipment through special mufflers, berming, or locating equipment below ground-level.
- Increasing the paved road threshold in AG-2 areas to 1,000 AADT and eliminating any road paving threshold in AG-3 areas.
- Requiring applicants to obtain a SJRWMD permit prior to scheduling the mining application for PZC consideration, in lieu of establishing a requirement for an expert review of the applicant's hydrology report.
- Third Option: Allow for hydrology report/expert review OR SJRWMD permit/description of how impacts are addressed

RECOMMENDATION

Staff recommends that the Board of County Commissioners announce its intention to adopt “Version 1” of the proposed mining regulation LDR amendments, which includes changing mining to a special exception use, and announce that its second and final hearing on the proposed ordinance will be held on December 19, 2008 at 9:00 am in the County Commission Chambers.

If the Board decides to keep mining as an administrative permit use, then the Board should:

1. Adopt “Version 2” of the proposed mining regulation LDR amendments, which keeps mining as an administrative permit use.
2. Adopt the attached resolution establishing an updated mining permit fee and a hydrology report expert review fee, and
3. Terminate the mining moratorium as of the effective date of the LDR amendment ordinance.