

Donald D. Conn
Cell: 727.641.9963
don@cbflalaw.com



Barrie S. Buena Ventura
Board Certified in City, County
and Local Government Law
Cell: 813.471.7427
barrie@cbflalaw.com

Conn & Buena Ventura P.A.
ATTORNEYS AT LAW

March 27, 2019

Via Electronic Transmission and U.S. Mail

Terrance E. Schmidt, Esquire
Bledsoe & Schmidt, P.A.
501 Riverside Ave., Suite 903
Jacksonville, FL 32202-0940

Re: DeSoto County's Pre-Mediation Memorandum Concerning
Mosaic's Claim for Dispute Resolution Pursuant to §70.51,
Florida Statutes

Dear Mr. Schmidt:

In accordance with the Guidelines issued on March 19, 2019, concerning the mediation process under §70.51, Florida Statutes, this Pre-Mediation Memorandum is submitted on behalf of DeSoto County. It is recognized that the purpose of this mediation is not to decide whether the DeSoto County Board of County Commissioners acted lawfully in denying a rezoning application filed by Mosaic Fertilizer, LLC. The purpose of this mediation is to identify a mutually acceptable path going forward that recognizes the right of any property owner to reapply for rezoning of its property after it has initially been denied, the right of any property owner to have permit applications reviewed and acted upon by the Board of County Commissioners, and the right of the Board to decide whether to approve or deny those applications based upon component, substantial fact and expert evidence received at a quasi-judicial hearing.

This Pre-Mediation Memorandum will provide background information concerning the Claim filed by Mosaic under §70.51, Florida Statutes, a summary of relevant provisions of the County's Comprehensive Plan concerning phosphate mining and Land Development Regulations concerning rezoning criteria, rebuttal argument to Mosaic's allegation that the Board has acted unreasonably and imposed unduly burdensome harm on Mosaic's property, and the County staff's position on settlement of this Claim.

(a) Background of Claim

On June 26, 2000, IMC-Agrico Company changed its name to IMC Phosphates Company, which on October 22, 2004 further changed its name to Mosaic Phosphates Company, which then merged on July 29, 2005 into Mosaic Fertilizer, LLC ("Mosaic"), a subsidiary of the Mosaic Company (NYSE: MOS). MOS is the world's leading integrated producer and marketer of concentrated phosphate and potash.

MOS mines phosphate rock from nearly 200,000 acres of Mosaic-owned land in Central Florida, and they mine potash from four mines in North America, primarily in Saskatchewan, Canada. Their products are processed into crop nutrients, and then shipped via rail, barge and ocean-going vessel to their customers in the major agricultural centers of the world.

On December 14, 2016, Mosaic filed with the DeSoto County Development Department three development order applications. The first application is an Official Zoning District Atlas amendment (also called a rezoning) to change the zoning district from Agriculture 10 (A-10) to Phosphate Mining-Industrial (PM-I) of land totaling 14,053.40+acres that is generally located north of SW Adams Road, south of the DeSoto/Hardee County line, west of NE County Road 661, and east of the DeSoto/Manatee/Sarasota County line. In addition, Mosaic already owns or controls 8,985+ acres of land which is already zoned PM-I. The entire approximately 23,000 acres has a General Phosphate Mining Overlay (GPM-O) designation or category. The boundary of the entire area that is proposed to be rezoned to PM-I along with the area that is already zoned PM-I, as well as the Overlay, is shown on See **Exhibit 1**.

The second application is for the Phosphate Mining Master Plan (PMMP) while the third application is for an Operating Permit (OP). The Board of County Commissioners took action only on the rezoning application, and it is the denial of that application which is the basis for Mosaic's Claim under §70.51, Florida Statutes.

The Board of County Commissioners' denial was based upon evidence presented at a quasi-judicial hearing concerning Mosaic's rezoning application held on July 24 and 25, 2018, and resulted in a development order rendered on August 2, 2018 (Ordinance No. 2018-13). See **Exhibit 2**. Mosaic disputes the substance of, and process leading to, the County's adoption of Ordinance No. 2018-13, and on August 14, 2018, Mosaic submitted a claim for dispute resolution pursuant to §70.51, Florida Statutes, concerning the County's denial of its rezoning application.

The Parties thereafter agreed to extend the time for selection of a special magistrate and for the County's response to Mosaic's claim. On January 8, 2019, the Parties agreed to your selection to serve as Special Magistrate for these proceedings. The County served its response to Mosaic's claim on January 23, 2019.

(b) Comprehensive Plan

The DeSoto County Comprehensive Plan is a state mandated long-term plan primarily intended to provide for and guide the County's physical development and growth. Initially adopted in the early 1990's, the DeSoto County Comprehensive Plan contains 14 chapters or elements governing such things as future land use, transportation, housing, infrastructure (i.e., potable water, sanitary sewer, solid waste, stormwater management or drainage, and aquifer recharge), parks and recreation, and the like. State law also requires that Comprehensive Plans be implemented through such things as adoption of Land Development Regulations (which include but are not limited to such requirements as zoning district regulations, subdivision regulations, off-street parking and off-street loading

regulations, and sign regulations), five-year capital improvement plans, the annual budget, and interlocal agreements.

The DeSoto County Comprehensive Plan, adopted April 23, 1991, contained few provisions governing mining generally or phosphate mining specifically. Future Land Use Element (FLUE) Policy L.1.1 provided that the extraction of mineral resources may be permitted in all future land use classifications subject to all applicable local regulations and FLUE Policy L.1.2 required a reclamation plan as part any permit authorizing extraction.

On September 28, 2010, the DeSoto County Board of County Commissioners (Board) adopted Ordinance No. 2010-26, which amended the FLUE by adding an objective and implementing policies pertaining to creation of a Generalized Phosphate Mining Overlay (GPM-O) designation. The Ordinance also amended the Future Land Use Map (FLUM) by identifying a 25,000+ acre area displaying where the GPM-O designation would apply. Although the Ordinance did not include a legal description for the GPM-O designation boundaries, the legal description provided with the Comprehensive Plan text amendment application was used to prepare the GPM-O designation boundaries. The Board's establishment of the GPM-O designation ensured that phosphate mining activities could no longer occur countywide but were limited in application to the area defined by the GPM-O designation. See **Exhibit 1**. However, the GPM-O designation did not grant any development rights. For mining to occur within the Overlay, property would have to be properly zoned and necessary permits and approvals had to be obtained from the County.

On January 27, 2015, the DeSoto County Board of County Commissioners adopted Ordinance No. 2015-0, which amended the Comprehensive Plan's Definitions Element (DE), the FLUE, and the Conservation Element (CE). The DE amendments revised the definition of reclamation and added definitions for restoration, ecological value, mitigation, and phosphate mining corridor. The FLUE amendments modified Policies on Conservation Overlay designation uses, wetlands, environmentally sensitive lands and historically significant resources, and on Generalized Phosphate Mining Overlay designation development standards. The CE amendments modified Policies on mitigation activities, prohibited mining areas, ecological value, mitigation and reclamation, and on regulating phosphate mining. Mosaic will have the burden of establishing consistency with these Elements and Policies in any hearing concerning a subsequent new application for rezoning and concerning its pending applications for PMMP and OP approvals.

c) Rezoning Criteria

Land Development Regulation Section 20-1498(a) sets forth 15 factors that must be considered by the Desoto County Planning Commission and Board of County Commissioners in evaluating an application for rezoning, as follows:

1. Whether the proposed change would be consistent with the Goals, Objectives and Policies of the Comprehensive Plan.
2. The existing land use pattern.

3. The creation of an isolated district unrelated to adjacent and nearby districts.
4. The impact on the availability of adequate public facilities consistent with the level of service standards adopted in the comprehensive plan, and as defined and implemented through the DeSoto County concurrency regulations.
5. Whether the existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for changes.
6. Whether changed or changing conditions make the passage of the proposed amendment necessary.
7. Whether the proposed change will adversely influence living conditions in the area.
8. Whether the proposed change will create or excessively increase traffic congestion or otherwise affect public safety.
9. Whether the proposed change will create a drainage problem.
10. Whether the proposed change will seriously reduce light and air to adjacent areas.
11. Whether the proposed change will adversely affect property values in the adjacent area.
12. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accord with existing regulations.
13. Whether the proposed change will constitute a grant of special privilege to an individual owner as contrasted with the public welfare.
14. Whether there are substantial reasons why the property cannot be used in accord with existing zoning.
15. Whether the change suggested is out of scale with the surrounding area.

These factors were considered and applied by the Board in evaluating and weighing the competent substantial evidence received at the quasi-judicial hearing held on July 24 and 25, 2018, at which the Board denied Mosaic's rezoning request.

d) The Board's Rezoning Decision

Mosaic included allegations in its Claim that the Board of County Commissioners acted "unreasonably" and imposed "unduly burdensome harm" on its property interests when it denied Mosaic's application for rezoning. PM-I zoning is a precondition to phosphate

mining. However, zoning alone does not authorize such mining. In order to commence phosphate mining, an owner must also receive approval of its Phosphate Mining Master Plan and Operating Permit from the County. See **Exhibit 3**. Mosaic acknowledges this by having submitted applications for both of these approvals at the same time it submitted the application for rezoning. Only the rezoning application has been considered by the Board of County Commissioners to date. Even if the rezoning application had been approved, Mosaic could not commence mining. Further, in accordance with Section 20-1345(c)(3), Mosaic can resubmit the same application for rezoning one year after the Board's denial, or sooner if it modifies the rezoning application in any way. See **Exhibit 4**. Thus, the denial of its rezoning application did not result in Mosaic being permanently unable to attain the reasonable, investment backed expectation for a vested right to a specific use of property because no vested right to phosphate mining exists for property owned by Mosaic that is zoned A-10, Mosaic can reapply for rezoning, and zoning alone does not authorize phosphate mining.

Based upon competent substantial evidence introduced during the quasi-judicial hearing held by the Board on July 24 and 25, 2018, consisting of sworn testimony from over 140 expert and lay witnesses and numerous documents, reports, and written presentations received in evidence, the DeSoto County Board of County Commissioners acted reasonably and fairly in denying Mosaic's application to rezone 14,053.40+ acres of property from Agricultural 10 (A-10) to Phosphate Mining-Industrial (PM-I) that would have been in addition to 8,985+ acres already zoned PM-I. Ordinance 2018-13, rendered on August 2, 2018 and filed by Mosaic with its claim for dispute resolution clearly and specifically sets forth the reasons for the Board's denial of Mosaic's rezoning application. Mosaic failed to meet seven (7) of the fifteen (15) zoning factors identified in Section 20-1498 of the County's Land Development Regulations.

The Board of County Commissioners found that approval of Mosaic's rezoning application would have:

- Been the first step leading to significantly altering the existing, historic residential and agricultural land use patterns of northwest DeSoto County if phosphate mining were to be allowed over the next 20 to 50 years in a PM-I district that would then total 23,000+ acres (**Factor 2**);
- Created an isolated PM-I district of 23,000+ acres unrelated to nearby adjacent agricultural and residential districts (**Factor 3**);
- Had an immediate adverse influence on living conditions in the area by introducing uncertainty for neighboring property owners concerning the continued residential and agricultural nature and use of their property, whether investment in their properties would be adversely impacted by adjacent phosphate mining activities, and whether regulatory oversight of phosphate mining would be sufficient to protect their property interests (**Factor 7**);
- Created adverse traffic conditions, congestion and delay affecting public safety on Highway 70 West as a result of Mosaic's intention to construct and maintain a

railway that would cross this major road several times each day (**Factor 8**);

- Ceated drainage problems given the topography of the area, the existence of a substantial number of wetlands and surface water bodies on or over lands surrounding and in the vicinity of the rezoned lands, the size and number of clay settling ponds to be constructed, and discharge quantities from these ponds that are expected to occur during mining operations (**Factor 9**);
- Adversely affected property values in the adjacent areas due to buyers' uncertainty concerning the impacts of phosphate mining if the rezoning was approved (**Factor 11**); and
- Been out of scale with residential and agricultural properties in the adjacent and surrounding area of northwest DeSoto County due to the size of the resulting PM-I district that would be larger than the City of Arcadia (**Factor 15**).

In reaching its decision, the Board of County Commissioners balanced Mosaic's private property rights against the private property rights of residents in the vicinity of the proposed mining activities, environmental impacts to wetlands, rivers and streams, and protection of agricultural uses and activities in DeSoto County. The intent and purpose of the County's Land Development Regulations is found at Section 20-3(d) of the County's Land Development Regulations which states:

It is the intent of the Board of County Commissioners that this LDR be interpreted and applied in a manner which respects the property rights of owners and developers in the County, does not place an inordinate burden on any owner or developer, is consistent with the Right to Farm Act (F.S. § 823.14), as it may be subsequently amended; recognizes and protects the building code exemption for nonresidential farm buildings provided by F.S. §§553.73 and 604.50, as those provisions may be subsequently amended; complies with F.S. § 163.3162, concerning agricultural lands and practices, F.S. § 163.3163, the Agricultural Acknowledgment Act, and F.S. § 633.226, farm building exemptions, as those provisions may be subsequently amended; and protects the public health, safety and welfare.

Mosaic seeks to rezone property that is zoned Agricultural 10. Section 20-126 of the County's Land Development Regulations further provides:

The intent of the Agricultural 10 District (A-10) is primarily agricultural, pastoral, the extraction or processing of non-phosphate minerals, and low-density residential development. This district is designed to accommodate traditional agricultural uses and conservatory measures, where appropriate, while protecting the rural areas of the County. The regulations in this district are intended to permit a reasonable use of the property, at a gross density of one dwelling per ten acres. At the same time, the intent is to prevent the creation of conditions which would endanger damage or destroy the agricultural base of the County, the

environmental resources of the County, the potable water supply and the wildlife resources. The first priority of this district is agricultural uses.

The Board acted in the public interest and consistent with of the County's Land Development Regulations by denying Mosaic's rezoning application when it balanced Mosaic's private property rights against the private property rights of owners adjacent to and in the vicinity of the lands to be mined, natural resources to be impacted, and the importance of agricultural uses generally throughout the community and specifically on property zoned A-10. In so doing, the Board properly exercised its police powers for a proper public purpose.

The Board's action in denying Mosaic's rezoning application was neither unreasonable nor unfair, did not burden any vested property interest that Mosaic has in its property zoned A-10 at the time of its purchase or acquisition, and did not permanently impact any reasonable investment backed expectations to the specific use of property for which Mosaic sought rezoning from A-10 to PM-I.

(e) County Staff's Position for Settlement at Mediation

In proposing a resolution of this Claim, County staff is aware of the fact that Section 20-1345(c)(3), DeSoto County Code of Ordinances, provides that every applicant for rezoning has the right to reapply by submitting the same application after passage of one year from denial or may submit a modified or amended rezoning application at any time. See **Exhibit 4**. Additionally, Mosaic has certain legal rights to challenge the Board's denial of its rezoning application but has chosen to defer exercise of those rights until the conclusion of this process under the tolling provisions of §70.51, Florida Statutes. County staff seeks a resolution through this process in order to avoid the expense, uncertainty and delay which would undoubtedly result from litigation. It is the hope of County staff that the Special Magistrate will issue a settlement recommendation that County staff can support and recommend to the Board of County Commissioners.

Therefore, County staff proposes that the following terms be included in a Settlement Agreement to be recommended by the Special Magistrate for consideration by the Board of County Commissioners and Mosaic:

- In accordance with Section 20-1345(c)(3), DeSoto County Code of Ordinances, Mosaic may submit a new, revised Rezoning Application at any time, but may not resubmit the same Rezoning Application acted upon by the County on August 2, 2018, earlier than August 3, 2019. The Planning Commission and the Board of County Commissioners will consider a new Rezoning Application together with the Phosphate Mining Master Plan and Operating Permit applications that have already been filed with the County as part of *de novo* quasi-judicial hearings in accordance with the Future Land Use Element of the DeSoto County Comprehensive Plan and Land Development Regulations.
- Prior to the hearings on Mosaic's applications for Rezoning, Phosphate Mining Master Plan and Operating Permit, the County will schedule a series of workshops on factors for evaluation of a rezoning application as well as the requirements for

Phosphate Mining Master Plans and Operating Permits set forth in the County's Land Development Regulations, at which Mosaic, County staff and members of the public may make presentations and be heard in accordance with Board policy or alternative procedures approved by the Board. Mosaic may also hold separate workshops and community meetings to provide information and answer questions about its applications.

- Mosaic has the burden of proof to establish by competent substantial evidence received at the hearings on Mosaic's new application for Rezoning and applications for Phosphate Master Mining Plan and Operating Permit approvals that said applications comply with and meet the requirements of the County's Comprehensive Plan and Land Development Regulations.
- At the hearings held by the Planning Commission and the Board of County Commissioners, Mosaic and the County may also enter into any ancillary development agreements necessary to demonstrate consistency with applicable law, ordinances or regulations, and/or to protect the public health, safety and welfare.
- The hearings held by the Planning Commission and Board of County Commissioners will be held no earlier than January 1, 2023.
- Consistent with Florida law, the Board of County Commissioners will review the Rezoning Application as an entirely new application, with review based on the new record comprised of factual and expert evidence received at the quasi-judicial hearing.
- Mosaic will waive its right to judicial review of the prior rezoning decision rendered by the Board of County Commissioners on August 2, 2018 (Ordinance No. 2018-13).

DeSoto County appreciates your assistance and efforts to reach a resolution of this Claim under §70.51, Florida Statutes.

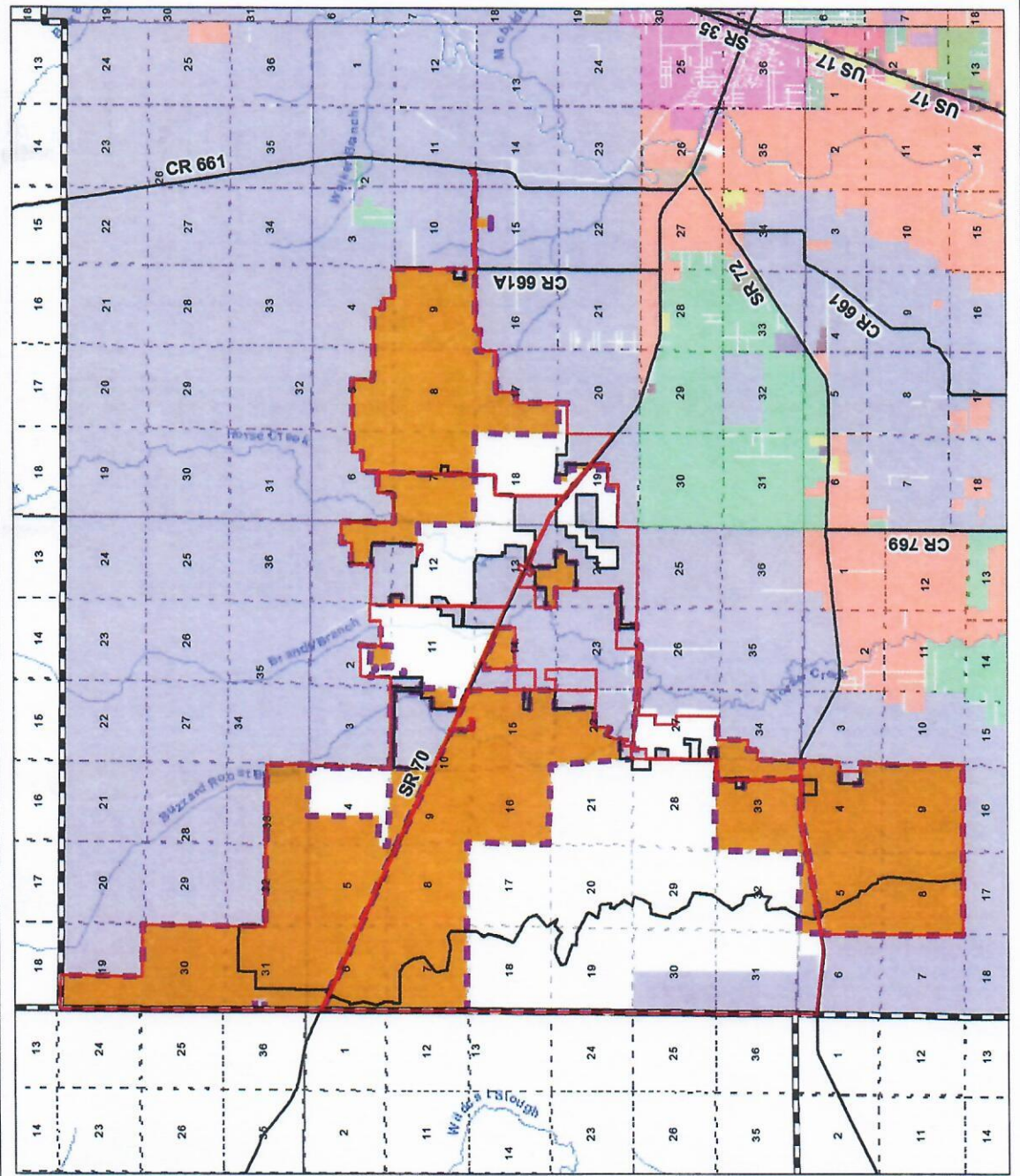
Sincerely,



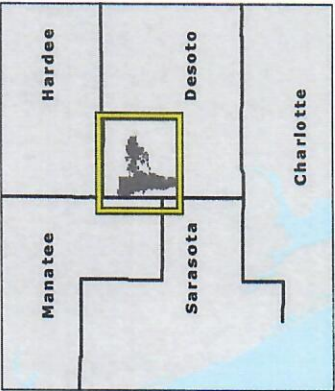
Donald D. Conn

cc (via email only): DeSoto County Board of County Commissioners
Mandy J. Hines, County Administrator
Vnette D. Godelia, Esq,
Mohammed Jazil, Esq.
Jon Faletto, Esq.

DeSoto Phosphate Overlay Zoning Map Areas To Be Re-Zoned To PM-I Designation



Location Key



Legend

Phosphate Mining Overlay Boundary	PM-I
Roads	RM
County Lines	RMF
DeSoto Mine Boundary	CITY
Mosaic Rezoning Boundary	CN
Section Lines	IH
Township Range	IL
Major Streams	ILE
ZONING	M-1
A-10	MHP
	MHS
	Areas To Be Returned To Farm



Map 3

User: ymz date: 12/6/2016
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