

DEVELOPMENT DEPARTMENT REPORT

The agenda request before the Board of County Commissioners (Board) is an Official Zoning District Atlas (OZDA) amendment application (RZ 2016-05) filed by Mosaic Fertilizer, LLC to change from Agriculture 10 (A-10) to Phosphate Mining-Industrial (PM-I) the zoning district of 14,053.40+ acres of land 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. The application is before the Board because Land Development Regulations Section 20-1501 requires the Board, upon receipt of the Planning Commission report and recommendation on an OZDA (i.e., rezoning) amendment application, to hold a public hearing and take action on the application. *At the duly noticed June 5th and June 6th, 2018 Planning Commission public hearing, the Commission recommended the Board adopt the Ordinance by a 3 to 2 vote. The Development Director concurs with the Planning Commission's recommendation.*

I. BACKGROUND

On June 26th, 2000, IMC-Agrico Company changed their name to IMC Phosphates Company, who on October 22nd, 2004 changed their name to Mosaic Phosphates Company, who merged on July 29th, 2005 into Mosaic Fertilizer, LLC (MFL), a subsidiary of the Mosaic Company (NYSE: MOS). MOS is the world's leading integrated producer and marketer of concentrated phosphate and potash. MOS employs nearly 15,000 persons



in six countries, 3,000 persons in Florida, and participates in every aspect of crop nutrition development.

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.

Phosphate has significant economic importance in Florida, yet according to a 2002 survey, 70% of Florida residents claimed that they were uninformed about the industry. Residents who are aware of phosphate mining and fertilizer manufacturing in Florida tend to have strong opinions either in favor or in opposition to its presence.

On December 14th, 2016, MFL 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 and 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. This includes 9,482.4 acres that MFL owns fee simple and over 4,575.1 acres for which it has minerals interests/controlling rights (See Attachment 1). Attachments 2A through 2E is an MFL provided map displaying the General Phosphate Mining Overlay (GPM-O) designation or category boundaries with a solid red line. The properties already zoned PM-I district are colored white, the properties proposed to be rezoned PM-I district are colored light brown and bounded by a garnet dashed line, and the remaining properties within the GPM-O that are not affected by this rezoning application are colored a light purple, which represents lands zoned Agricultural 10 district.



The second application is for the Phosphate Mining Master Plan (PMMP) while the third application is for the Operating Permit (OP). This Development Department Report only addresses the rezoning application. Separate Development Department Reports will be prepared for each of the other applications.

Zoning District Regulations. On June 7th, 1973, the Board adopted Ordinance No. 1973-3, which ordinance adopted zoning district regulations and a zoning district map for the unincorporated areas of DeSoto County. This initial zoning district regulations and zoning district map did not provide for any mining zoning districts and did not even include definitions of mining, excavation, or extraction.

On September 29th, 1981, the Board adopted Ordinance No. 81-10, which ordinance repealed Ordinance No. 1973-3 and established new zoning district regulations and zoning district map. The new zoning district regulations included the “Phosphate Mining and Earth Moving District (M-I)” and the new Zoning District Map rezoned 8,985-acres of land to M-I district. Since that time, there have not been any site specific rezoning applications to the M-I zoning district. On May 25th, 1993, the Board adopted Ordinance No. 1993-03, which among other things, changed the name of the zoning district to Phosphate Mining-Industrial (PM-I).

DeSoto County Comprehensive Plan. The DeSoto County Comprehensive Plan is a state mandated long-term plan primarily intended to provide for the County’s physical development and growth. Initially adopted in the early 1990’s, the DeSoto County 2040 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 2010 DeSoto County Comprehensive Plan, adopted April 23rd, 1991, contained few provisions governing mining and phosphate mining. 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 of the extractive use permit (See Attachment 3).

On September 28th, 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 (See Attachment 4). The Ordinance also amended the 2030 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.

On January 27th, 2015, the DeSoto County Board of County Commissioners adopted Ordinance No. 2015-01 (See Attachment 5), 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 Policy 1.12.2 on Conservation Overlay designation uses, Policy 1.12.6 on wetlands, Policy 1.12.10 on environmentally sensitive lands and historically significant resources, and Policy 1.12.b.3 on



Generalized Phosphate Mining Overlay designation development standards. The CE amendments modified Policy 1.5.6 on mitigation activities, Policy 1.5.9 and Policy 1.6.4 on prohibited mining areas, Policy 1.7.10 on ecological value, Policy 1.7.11 on mitigation and reclamation, and Policy 1.9.7 on regulating phosphate mining.

Neither the 2010 nor the 2015 Comprehensive Plan amendments contained any policies:

- Restricting the size of land within the GPM-O designation which may be rezoned at any one time to PM-I district; or
- Requiring that land already zoned PM-I district must first be mined and reclaimed before any new rezoning application to PM-I can be filed.

Within the GPM-O, Mosaic owns in fee simple 18,051.7 acres and 4,987.1-acres for which it has minerals interests/controlling rights, for a total of 23,038.8-acres. Of this land, 8,985.4-acres already are zoned PM-I district.

II. PROPOSED ORDINANCE

Attachment 6 is an Ordinance of the DeSoto County, Florida Board of County Commissioners amending the Official Zoning District Atlas identified in Land Development Regulations Article 2, Zoning Districts and Requirements, Section 20-31, Establishment of Zoning Districts; granting Mosaic Fertilizer, LLC an Official Zoning District Atlas amendment (RZ 2016-05) to change from Agriculture 10 (A-10) to Phosphate Mining-Industrial (PM-I) the zoning district of 14,053.40+ acres of land 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, the legal description which is included in Exhibit A; providing for codification; and providing for an effective date.

III. DATA & ANALYSIS

The Applicant has the burden of proof to demonstrate on the record and through competent substantial evidence that the application conforms to the LDR requirements for rezoning applications. Competent substantial evidence can be interpreted as evidence that:

- is legally sound (sufficient and admissible under the rules of evidence, although it doesn't have to comply with courtroom formality);
- is real (non-speculative, non-hypothetical) and based on facts (more than conjecture, unsupported generalized statements, surmise, mere probabilities, guesses, whims, or caprices);
- is reliable (credible, believable);
- is material (pertinent, relevant);
- tends to prove the points (facts, elements, standards) that must be proven (not just create a suspicion or could equally support another result);
- establishes a reasonable, substantial justification (basis of fact) for the point argued; and
- a reasonable mind would accept it as enough (adequate) to support the argued for conclusion.

LDR Article XI, Administration and Enforcement, Division 7, addresses Official Zoning District Atlas (i.e., rezoning) amendment and LDR text amendment applications. LDR Section 20-1650 defines Official Zoning District Atlas as scaled-based maps of the unincorporated area of the County depicting the land features, roads and property lines overlaid with Zoning District boundaries adopted by the DeSoto County Board of Commissioners and certified and dated by the Chairman, as may be amended from time to time. Zoning District symbols are depicted within each boundary.



A. Application requirements. Land Development Regulations Section 20-1496 establishes two prerequisites for the filing of an Official Zoning District Atlas amendment as shown below.

1. *Initiation. Section 20-1496(a) restricts the persons who may initiate an Official Zoning District Atlas amendment to the following:*

- *Board of County Commissioners;*
- *Planning Commission;*
- *Board of Adjustment;*
- *Any other department of agency of the County; or*
- *Any person other than those listed above; provided, however, that no person shall propose an amendment for the rezoning of property (except as agent or attorney for an owner) which he does not own. The name of the owner shall appear on each application.*

On December 14th, 2016, Michael J. Deneve, Senior Director Mine Permitting & Regulatory Affairs, filed on behalf of the property owner, Mosaic Fertilizer, LLC (MFL) a written General Development Order and Official Zoning District Atlas (GDO/OZDA) amendment application and fee (RZ #2016-05) with the Development Department, which application is included herein by reference and is available on the County's webpage at :

http://desotobocc.com/?/rezoning_applications_2016

Based on the above, the Development Director concludes the application is **in conformance** with LDR Section 20-1496(a) because the application was filed by a property owner representative.

2. *Filing requirements. Section 20-1496(b) provides that all proposals for zoning amendments shall be submitted in writing to the Development Department, accompanied by all pertinent information required by the LDR and the application along with payment of the application fee.*

As noted above, a written General Development Order and Official Zoning District Atlas (GDO/OZDA) amendment application and fee was filed with the Development Department. The written application was filed in a three-ringed binder, which binder included a transmittal letter, a table of contents, and eight tabs covering the following topics respectively: rezoning application, list of tables, list of maps, deeds and permitting agreements, retained mineral interest, permitting agreements, merger documents, and a compact disk that includes the full application. The application subsequently was amended by written letter dated May 18, 2018, which is included herein by reference and is on the County's webpage at:

http://desotobcc.com/?/rezoning_applications_2016

Based on these findings, Development Director concludes the application is **in conformance** with LDR Section 20-1496(b) because a written application containing pertinent information was filed along with an application fee.

B. Staff review. LDR Section 20-1497 addresses staff review.

1. *Section 20-1497(a) provides that upon receipt of an application, the Development Director shall determine whether the application is complete. If the application is complete, it will be accepted for review. If the application is incomplete, the Development Director shall specify in writing the additional information required in order for the application to be*

processed. No further action shall be taken on the application until the additional information is submitted and determined to be complete.

The Development Director finds the application was filed on December 14th, 2016, but the LDR does not specify the time the Development Director has to determine whether or not a rezoning application is complete. Notwithstanding, the Development Director has interpreted the time frames established in Section 20-1380, Procedures for Review of Major Developments, to be applicable to development order applications (such as re-zonings, special exception uses and variances). That procedure requires the Development Director to make a determination on the completeness of an application within five (5) working days. If the application is incomplete, the Director must notify the applicant in writing of any deficiencies. The Development Director reviewed the application for “technical” completeness and determined the application was complete but the Development Director did not issue to MFL a Notice of Completeness letter. Based on these interpretations and findings, the Development Director concludes the application became complete on December 21st, 2016. Thus, the Development Director concludes the application is complete and that the application has been processed **in conformance** with LDR Section 20-1497(a).

2. *Section 20-1497(b) provides that after receipt of a complete application, the Development Director shall distribute the application for review by County staff and/or the Development Review Committee.*

The Development Director finds the application package was distributed to Development Review Committee (DRC) members and the DRC comments are included herein as Attachment 7.

Thus, the Development Director concludes the application has been processed **in conformance** with the requirements of LDR Section 20-1497(b) based on the finding that the application package was distributed to the DRC for review and comments.

3. *Section 20-1497(c) provides that upon completion of review, the Development Department shall prepare a staff report and schedule review of the application at a public hearing by the Planning Commission.*

This Development Department Report is the staff report required by this section and the Development Director has tentatively scheduled the application for the June 5th and 6th, 2018 Planning Commission public hearing. The staff report has been revised since the Planning Commission public hearing to clarify issues raised at the Planning Commission public hearing and to add the Planning Commission's unapproved minutes. On March 23rd, 2017, the Development Director transmitted to MFL a request for additional information in the form of a draft staff report, a copy of which is available on the County's website. MFL subsequently provided a supplemental response on May 18th, 2018.

Thus, the Development Director concludes the application has been processed **in conformance** with LDR Section 20-1497(c) because a staff report has been prepared and a Planning Commission public hearing date have been scheduled.

- C. **Alternate public hearing requirements.** LDR Section 20-1404 provides that if the Board determines that issues to be presented at a hearing are complex and likely to result in extensive expert testimony and/or requests by individuals or groups to present testimony, exhibits and cross examine witnesses, thereby resulting in the likelihood of a lengthy, multi-day hearing, the Board may decide that



these alternate procedures shall be followed by adopting a Resolution at least 45 calendar days prior to commencement of the hearing declaring that the procedures set forth in this section shall apply in a specified hearing. On February 13th, 2018, the Board adopted Resolution 2018-12, which authorized the use of the alternate public hearing requirements to the Mosaic Fertilizer, LLC rezoning application (See Attachment 8).

D. Planning Commission Report. LDR Section 20-1498(a) provides that the report and recommendations of the Planning Commission to the Board of County Commissioners shall show that the Planning Commission has studied and considered the proposed change in relation to the 15 factors listed below.

1. *Whether the proposed change would be consistent with the Goals, Objectives and Policies of the Comprehensive Plan.*

Florida Statutes Section 163.3194(3)(a) defines consistency as: “A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.”

Florida Statutes Section 163.3164(9) defines “compatibility” as “a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.”

This analysis focuses on consistency of the rezoning application with the Interim 2040 Future Land Use Map (FLUM)



and consistency of the rezoning application with the Comprehensive Plans Goals, Objectives, and Policies (GOP).

The Development Director's initial review of consistency of the rezoning application with the FLUM concluded the maps did not clearly establish that all of the properties to be rezoned were located within the Generalized Phosphate Mining Overlay (GPM-O) boundaries. Subsequently, the Development Director caused a more detailed consistency review to be conducted, which provided for the GPM-O designation legal description and boundaries to be compared and contrasted against the rezoning legal descriptions, property identification numbers, and rezoning maps filed by MFL. This more detailed review resulted in the Development Director's discovery that one parcel (i.e., PIN 15-37-24-0000-0067-0000) to be rezoned was not located within the GPM-O boundaries. MFL's response acknowledges that the above parcel is outside of the GPM-O boundaries and the application and legal description was amended to remove that parcel from the rezoning application. Based on the above, the Development Director now concludes the rezoning application is **consistent** with the FLUM because the land to be rezoned is entirely located within the GPM-O boundaries.

The Generalized Phosphate Mining Overlay Designation was established to ensure the orderly development of phosphate mining activity, including the extraction of mineral resources and reclamation of mined land in a manner compatible with the overall development of the County and the protection of environmental resources as further prescribed in the policies listed below and Phosphate Mining Regulations set forth in the land Development Regulations. The zoning district intended to implement the GPM-O designation is the PM-I zoning district. The Official Zoning District Atlas already provides for nearly

9,000-acres of land zoned PM-I district and located within the GPM-O designation. The 14,000+ acres is entirely located within the GPM-O and it abuts property already zoned PM-I district. Further, the LDR establishes setbacks to protect mining uses from other non-mining uses. Thus, the land uses or conditions allowed in the PM-I zoning district can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

Attachment 9 is a list of Comprehensive Plan GOPs that pertain to phosphate mining and rezoning applications and that analysis reveals that the rezoning application is **consistent** with the Comprehensive Plan's GOPs.

In summation, the Development Director concludes the rezoning application **is consistent** with the Comprehensive Plan.

2. *The existing land use pattern.*

The area designated GPM-O on the Interim 2040 FLUM is an irregularly-shaped area of about 25,000+ acres that generally is 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. Attachment 2A shows the area to be rezoned includes:

- 9,478.3 acres that MFL owns in fee simple; and
- 4,575.1 acres for which MFL has minerals interests or controlling rights.

The Development Director's written request for additional information noted that the existing land use pattern could not be

clearly discerned from the application. To facilitate review, the Development Director caused staff to prepare a series of 24” by 36” Geographic Information System maps for the areas being rezoned, which map series are available in the Planning and Zoning Division office and which are incorporated herein by reference. The map series provides an aerial photograph as the base map and it shows:

- The GPM-O designation boundaries;
- The boundaries of the property to be rezoned;
- The existing land use of the property to be rezoned based upon the DeSoto County Property Appraiser’s (DCPA) land use classification;
- A boundary displaying a 1,000 foot radius around the property to be rezoned, which coincides with those landowners to be notified about the rezoning application; and
- The existing land use of property around the property to be rezoned based upon the DCPA land use classification.

In addition to the map series, the Development Director verified the existing land use pattern through ground visits conducted on November 29th, 2017 and May 18th, 2018, and through an aerial flight of the property proposed for May 23rd, 2018.

The Development Director has chosen to describe the existing land use pattern based upon the SmartCode Transect Zone descriptions (See Attachment 10). The SmartCode is a model transect-based planning and zoning document based on environmental analysis. It addresses all scales of planning, from the region to the community to the block and building and provides a logical system for categorizing existing land use patterns. The Florida Department of Transportation (FDOT) has recently adopted the document titled “Completing Florida’s



Streets Context Classification”, which uses the SmartCode’s Transect Zone descriptions and other methodologies to determine the appropriate roadway treatments along state roadways.

Based upon the transect zone descriptions, the ground and aerial site visits, and the above described land use map series, the existing land use pattern can be described as predominantly rural, which is characterized primarily by agricultural lands with woodlands and wetlands and scattered buildings. As noted above, this rural classification is supported by the DCPA land use classification, which shows the area designated Generalized Phosphate Mining Overlay contains substantial lands devoted to pastureland, orchards, and croplands.

The application suggests that during the short-term (5 years or less), MFL will cause few, if any, changes in the existing land use pattern. First, the proposed rezoning does not authorize mining and mining related activities. Such activities may only take place when all permit approvals have been secured. This is evidenced by the rezoning to PM-I district of nearly 9,000 acres in the 1980’s.

Second, mining activities may not commence until:

- The US Army Corps of Engineers (ACE) issues a Clean Water Act, Section 404 permit;
- The US Fish and Wildlife and the Florida Fish and Wildlife Commission approve Habitat Management Plans;
- The Florida Department of Environmental Protection issues a National Pollutant Discharge Elimination Permit; and



- The DeSoto County Board of County Commissioners issues a Phosphate Mining Master Plan and Operating Permit.

Third, assuming permit approvals are eventually received, it will take years to develop the infrastructure (i.e., construct a beneficiation plant, clay settling areas, roadway access and internal driveways, etc.) necessary for phosphate mining excavation activities to take place.

During the mid-term (5 to 10 years) and long-term (to 2040), there will be a temporary disruption of the existing land use pattern as phosphate is excavated and extracted from the land. Subsequent to the extraction of phosphate, the lands will be reclaimed and returned back to its predominantly agricultural use and natural land use pattern. This process of mining and reclaiming land within a one square mile section takes approximately 5 to 7 years to complete.

Finally, when phosphate mining activities are terminated, all the land will be reclaimed and the existing land use pattern will be reinstated. Based upon the above, the Development Director concludes the rezoning to PM-I is **in conformance** with the factor on the existing land use pattern.

3. *The creation of an isolated district unrelated to adjacent and nearby districts.*

This factor addresses the issue of “spot” zoning, which is the placing of a small area of land in a different zone from that of neighboring property. The application states the proposed amendment will not create an isolated district unrelated to adjacent and nearby districts. Attachments 2A through 2E shows the GPM-O designation boundaries are outlined with a solid red line. Those areas already zoned PM-I district are



colored in white, those 13 noncontiguous areas proposed to be rezoned to PM-I district are colored in light brown and bounded with a garnet dashed line, and those areas that will not be zoned PM-I district are colored light purple.

Attachment 2B illustrates an irregularly-shaped 7,210.6-acre area being rezoned that abuts to the east and to the south property already zoned PM-I. Thus, the rezoning of this area does not create an isolated area zoned PM-I district that is unrelated to nearby districts.

Attachment 2C shows eight (8) noncontiguous areas totaling 313.7-acres that are proposed to be rezoned to PM-I district. Of these 8 noncontiguous areas, seven (7) abut property zoned PM-I district. The remaining 21.2-acre tract does not abut PM-I property but is nearby other property zoned PM-I or being rezoned to PM-I. Based on the above, it can be concluded that the rezoning of these noncontiguous areas do not create an isolated area zoned PM-I district that is unrelated to nearby district.

Attachment 2D shows three (3) noncontiguous areas totaling 3,134.4-acres that are proposed to be rezoned to PM-I district. All three of these areas abut property zoned PM-I district.

Attachment 2E shows a 3,394.5-acre property that is proposed to be rezoned to PM-I district and it demonstrates that property abuts to the north property already zoned PM-I district.

Attachment 11 displays the proposed conditions should the rezoning application be approved. It shows one large and connected area zoned PM-I district. It also shows a stand-alone 21.2-acre property but that property is located in the same section as other properties zoned PM-I district.

In conclusion, based upon the above, the Development Director concludes the application is **in conformance** with this factor because the proposed rezoning will not create an isolated PM-I district that is unrelated to adjacent property zoned PM-I district.

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.*

FLUE Policy 1.22.5 establishes level of service standards (LOSS) for the following public facilities: roadways, recreation and open space, solid waste, potable water and sanitary sewer. The application states that rezoning does not authorizing any mining or mining related activities to take place, that the level of service methodology is population based, that the proposed rezoning will not result in increased population because the underlying residential density established by the Rural/Agriculture designation is the same, and, therefore, the rezoning will not impact the availability of public facilities including potable water, sanitary sewer, recreation and open space (there is no residential component), solid waste, and drainage.

FLUE Policy 1.22.5(2)(b) provides that for recreation and open space, failure to provide sufficient supply for projected needs will result in the denial of concurrency. Recreation and Open Space Element Policy 1.1.1 provides the recommended planning level of service (LOS) standard for parks shall be twenty (20) acres of parkland per 1,000 residents. This standard includes both passive and active County parks and recreational facilities, and includes Regional, Community, Neighborhood, and Mini-parks. Due to the fact that the level of



service methodology is based on population and the maximum density is governed by the FLUM's underlying Rural/Agriculture designation, which allows one dwelling unit per 10-acres, the proposed rezoning will not generate any addition population that will impact the recreation level of service standard. Based on the above findings, it is concluded the proposed rezoning will not impact the parks and recreation level of service.

FLUE Policy 1.22.5(3)(b) provides that for potable water and sanitary sewer, failure to provide sufficient supply for projected needs will result in the denial of concurrency. For level of service analysis purposes, the potable water LOSS is 102 gallons per person per day while the sanitary sewer LOSS is 80 gallons per capita per day. Due to the fact that the level of service methodology is based on population and the maximum density is governed by the FLUM's underlying Rural/Agriculture designation, which allows one dwelling unit per 10-acres, the proposed rezoning will not generate any addition population that will impact the supply of potable water and sanitary sewer. Based on the above findings, it is concluded the proposed rezoning will not impact the potable water and sanitary sewer level of service.

FLUE Policy 1.22.5(2)(b) also provides that for solid waste, failure to provide sufficient supply for projected needs will result in the denial of concurrency. An Engineering Division analysis found that as of January 1st, 2016, about 70 percent of the design capacity for Landfill Zone 4 has been filled. For level of service analysis purposes, the solid waste LOSS is 2.75 pounds per capita per day. Due to the fact that the level of service methodology is based on population and the maximum density is governed by the FLUM's underlying Rural/Agriculture designation, which allows one dwelling unit per 10-acres, the proposed rezoning will not generate any addition population



that will impact solid waste facilities. Based on the above findings, it is concluded the proposed rezoning will not impact the solid waste level of service.

Transportation Element Policy 1.1.3 provides the level of service for rural two-lane roadways which are recognized as SIS and FISH facilities, such as State Road 70 and US Highway 17, are designated as "C". All two-lane rural roadways shall also be considered "C." The application suggests several responses regarding roadways. First, the rezoning to PM-I does not authorize MFL to commence phosphate mining activities and the commensurate roadway impacts associated with such development. Those activities cannot occur unless MFL receives the required federal permits and the Board of County Commissioners approves a Phosphate Mining Master Plan (PMMP) and an Operating Permit. Moreover, nearly 9,000 acres was rezoned to PM-I district in the 1980's and there has been no appreciable increase in traffic as a result of that rezoning.

Second, the Agricultural/Rural FLUM designation, which establishes a maximum residential density of one dwelling unit per 10-acres, is not being changed. Thus, the PM-I zoning district allows the same maximum number of residential dwelling units as the A-10 zoning district. Both the existing A-10 and proposed PM-I zoning districts could allow 13,445 daily trips and 1,391 peak hour p.m. trips, not including the trips associated with the existing 9,000 acres.

Third, with regard to non-residential uses, the A-10 zoning district allows some land uses, such as agritourism related development and wholesale agricultural produce transfer stations, that potentially generate more daily and peak hour trip ends than phosphate mining.

Fourth, even assuming that the Applicant subsequently receives all required permit approvals, the transportation analysis included with the PMMP and OP applications show that the traffic generated by the proposed mining activities is less than five percent of the roadway capacities, and that such roadways will continue to operate within adopted levels of service. Based on the above findings, it is concluded the proposed rezoning application will not adversely impact the transportation level of service.

In summation, it is concluded that the rezoning application is **in conformance** with this factor because it will not adversely impact on the availability of adequate public facilities consistent with the adopted level of service standards.

5. *Whether the existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for changes.*

The existing condition on the property is the presence of the phosphate resources and the A-10 zoning district does not allow phosphate mining resources to be extracted. FLUE Objective 1.12b acknowledges the presence of phosphate mining resources as a reason for creating the GPM-O designation.

The PM-I zoning district is the only zoning district that allows phosphate resources to be extracted and the rezoning is to PM-I is consistent with the GPM-O designation. State law requires that Comprehensive Plan's be implemented and the rezoning would implement Comprehensive Plan phosphate mining provisions.

Thus, the existing zoning district boundaries are illogically drawn because the property has phosphate mining resources, the purpose of the GPM-O designation is to allow the extraction of phosphate, and the A-10 prohibits the property's phosphate resources from being extracted. Thus, the Development Director concludes the application is **in conformance** with this factor.

6. *Whether changed or changing conditions make the passage of the proposed amendment necessary.*

The changed or changing conditions are the depletion of phosphate resources from other phosphate mining locations, the establishment of the GPM-O designation, and the issuance of various permits to allow phosphate mining within DeSoto County.

First, after 40+ years of phosphate mining in Polk County, phosphate resources have been depleted and MFL is pursuing phosphate mining operations in other counties, including Sarasota, Manatee, and now DeSoto County. The proposed mining of phosphate in DeSoto County is the logical progression of phosphate mining in the Central Florida Phosphate District, which generally is trending to the south.

Second, in order to contain the area where phosphate mining activities can occur and to ensure the orderly development of phosphate mining activities in DeSoto County, in 2010 the Board adopted Comprehensive Plan amendments pertaining to phosphate mining. The FLUE was amended to add an objective and various policies governing phosphate mining and the FLUM was amended to establish a GPM-O designation that limited the geographic area where phosphate mining activities could occur. These provisions were strengthened in 2015 by



additional Comprehensive Plan amendments pertaining to phosphate mining.

Third, Mosaic Fertilizer, LLC has received various state permits for phosphate mining operations. These include:

- The Florida Department of Environmental Protection (FDEP) has issued an Environmental Resource Permit (ERP) to allow activities that affect wetlands, alter surface water flows or contribute to water pollution.
- The FDEP has issued a Conceptual Reclamation Plan establishing a framework of reclamation planning.
- The Florida Division of Historical Resources has issued a Cultural Resource Assessment Survey Clearance letter.
- The Southwest Florida Water Management District has issued an Integrated Water Use Permit for consumptive use of ground water.

Based upon the above, it is concluded that the application is **in conformance** with this factor because three changed conditions have been identified making the adoption of the rezoning necessary.

7. *Whether the proposed change will adversely influence living conditions in the area.*

The proposed rezoning will not adversely influence living conditions in the area. First, the proposed rezoning does not authorize mining and related activities. Those activities can only occur after receipt of federal, state, and county phosphate mining approvals. Moreover, the proposed rezoning does not



prevent any existing agricultural and rural uses from continuing to operate on the property.

Second, there is no evidence that adverse living conditions were created when nearly 9,000 acres were rezoned to PM-I in 1981.

Third, there is no evidence that adverse living conditions were created when DeSoto County adopted the 25,000-acres GPM-O designation in 2010. The purpose of the GPM-O designation is to limit phosphate mining activities to that specific area and not to other areas of DeSoto County. Moreover, the GPM-O designation was drawn with the consent of the landowners whose property was located within the GPM-O designation. That is why the boundary has an irregular shape or configuration.

Finally, there is no evidence that the proposed rezoning will cause noise, vibrations, light trespass and glare, air pollution and fugitive dust to be created. While these are important issues that staff and the Board must consider, those issues are properly addressed during the permitting and not the rezoning stage. It bears mentioning that unlike many other local governments, DeSoto County has not scheduled the rezoning application to be heard at the same public hearing as the PMMP and OP applications. Should the proposed rezoning application be approved, a separate duly notice public hearing will be held to consider the PMMP and OP applications.

Based on the above, it is concluded the application is **in conformance** with this factor because evidence has been provided to support a finding that the rezoning will not adversely influence living conditions in the area.



8. *Whether the proposed change will create or excessively increase traffic congestion or otherwise affect public safety.*

The proposed zoning district change will not create or excessively increase traffic congestion or otherwise affect public safety. First, the rezoning application does not authorize the commencement of phosphate mining activities. Future Land Use Element Policy 1.22(2) makes clear that “No rights to obtain intermediate or final development orders, nor any other rights to develop the subject property, will have been granted or implied by the County’s approval of the preliminary development order, which orders include rezonings, Comprehensive Plan Amendments and similar development orders that do not necessarily reflect a specific intensity and density development proposal. As noted previously, unless the Board subsequently approves the PMMP and the OP, federal (e.g., US Army Corps of Engineers Clean Water Act permit and US Fish & Wildlife Service Habitat Management Plan permit), and state (FDEP National Pollutant Discharge Elimination System and Florida Fish and Wildlife Habitat Management Plan) permits are secured, no phosphate mining activities can occur. Further, the proposed rezoning does not prevent any existing agricultural and rural uses from continuing to operate on the property.

Second, with regard to residential use, the underlying FLUM designation is Agricultural/Rural, which allows a maximum one dwelling unit per 10-acres, and that designation is not changing. Based on a property size of 14,053-acres, a maximum 1,405 dwelling units could be constructed on the property. The Institute of Traffic Engineers estimates that the average daily trip generation rate for a single family unit is 9.57 which translate into 13,445 daily trips. For a single family unit, the pm peak hour is 0.99, which would add 1,391 vehicles to the



roadway between 4 and 6 p.m. This is substantially more than the estimated 135 pm trips that would be generated from the phosphate mine, if approved. Moreover, the above analysis does not take into account the daily and p.m. trips that would be generated if the nearly 9,000-acres of land zoned PM-I district is included.

Third, with regard to non-residential uses, the A-10 zoning district already allows some land uses, such as agritourism related development and wholesale agricultural produce transfer stations, which if approved by issuance of a development permit, could potentially generate more daily and peak hour trip ends than the uses allowed within the PM-I zoning district.

Fourth, the proposed rezoning does not affect public safety concerns. This is evidenced by the rezoning to PM-I district of nearly 9,000 acres in the 1980's. While public safety associated with phosphate mining is an important concern, the proper forum for addressing such concerns is through the PMMP and OP application process and not the rezoning process. A separate duly noticed public hearing will be held to address those applications.

Based on the above, it can be concluded that the application is **in conformance** with this factor because the proposed rezoning will not create or excessively increase traffic congestion or otherwise affect public safety.

9. *Whether the proposed change will create a drainage problem.*

The proposed rezoning will not create a drainage problem. First, the proposed rezoning does not authorize any change to the existing drainage patterns and it allows the continued

agricultural and rural uses on the land to continue. This is evidenced by the rezoning to PM-I district of nearly 9,000 acres in the 1980's. A rezoning is a preliminary development order that does not allow mining and related activities to occur until all federal, state, and local development permits are acquired. If the Applicant cannot secure such permits, mining activities would be prohibited.

Second, LDR Section 20-571(6) provides that any development for which stormwater management permits are required by Federal, State, or SWFWMD regulations are exempt from the stormwater management requirements of this division to the extent that such permits include review and consideration of impacts on adjacent property and/or County drainage and provided that the development activities has the necessary permit prior to commencement. A Florida Department of Environmental Protection (FDEP) permit has been issued which is evidence of compliance with drainage requirements.

Third, the Development Director concludes that drainage issues are more appropriately addressed during review of the PMMP and OP and not during the rezoning process. As noted previously, a separate duly noticed public hearing will be held to consider the PMMP and OP applications. Thus, it is concluded the application **is in conformance** with this factor because the rezoning application does authorize any specific development that would affect drainage.

10. *Whether the proposed change will seriously reduce light and air to adjacent areas.*

The proposed change will not seriously reduce light and air to adjacent areas. First, the proposed rezoning does not prohibit the existing agricultural and rural uses and existing light and air



conditions from continuing to operate in the future. This is evidenced by the rezoning to PM-I district of nearly 9,000 acres in the 1980's.

Second, the serious reduction of light and air to adjacent areas typically is caused either by land development regulations that allow for buildings that are too high in relationship to the building or yard setbacks and air pollution, including fugitive dust emissions. The reduction of light and air due to an improper relationship between building height and setback is common in high intensity urban areas, where residential densities and/or floor area ratios and land costs are high. DeSoto County generally lacks the high land values to make vertical construction profitable.

Third, the proposed rezoning does not change the required mining setbacks. LDR Section 20-974(c)(2) establishes minimum setbacks ranging from 200 to 1,000 linear feet from the property line for excavation activities, settling ponds and beneficiation facilities, and stockpiles. Furthermore, that Section limits excavated material (ore), sand tailings or stockpile to a height of no more than a slope-line of 35 feet vertical to 500 feet horizontal projected from the nearest point on the permittee's property line, except as approved by the Board at a duly noticed public hearing. Mining's impacts to light and air and conformance with the setback requirements will be addressed when the PMMP and OP applications are considered.

Fourth, the proposed rezoning will not impact existing air quality standards. This is evidenced by the rezoning to PM-I district of nearly 9,000 acres in the 1980's. With regard to air pollution and fugitive dust emissions, LDR Sections 20-973(b)(18) and 20-974(c)(6) establishes an environmental monitoring program



for air quality. The PMMP and OP applications will address measures to reduce fugitive dust emissions.

Finally, the proposed rezoning constitutes a preliminary development order and such approval does not authorize any mining and related activities to operate on the property. Development may commence only when all federal, state, and county approvals have been received.

Thus, it is concluded the application is **in conformance** with this factor because the proposed change will not seriously reduce light and air to adjacent areas.

11. *Whether the proposed change will adversely affect property values in the adjacent area.*

The concept of property value being adversely impacted by proximity to an unpleasant business or industry is called stigmatization. The proposed rezoning is not expected to adversely affect property values in the adjacent area. First, the proposed rezoning would not prohibit the existing agricultural and rural uses from continuing to operate in the future.

Second, the proposed rezoning does not place any constraints or limitations on the adjacent property owners' use of their lands. Such owners propose new uses on their properties consistent with the property's zoning district.

Third, there is no evidence that property values were affected when nearly 9,000 acres were rezoned to PM-I in 1981.

Fourth, there is no evidence that property values were adversely impacted when DeSoto County adopted the 25,000-acres GPM-O designation in 2010.

Fifth, the proposed rezoning does not authorize mining and related activities. Those activities can only occur after receipt of federal, state, and county phosphate mining approvals.

Sixth, a literature search did not discover any studies concluding that phosphate mining had an adverse impact on property values in the abutting area

Finally, mining is a temporary land use occurring on only a portion of the proposed property at any one time. There is no evidence showing phosphate mining causes a temporary loss in value. However, assuming it was discovered that a temporary loss of value was to occur, that temporary loss of value could be recaptured. This recapture would occur once the land is reclaimed and returned to a similar state of use prior to mining.

Based on the above, it is concluded that the rezoning application is **in conformance** with this factor because the applicant has provided information pertaining to adverse impacts to 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.*

The proposed zoning district change will not be a deterrent to the improvement or development of adjacent property in accord with existing regulations. First, the proposed rezoning does not change the physical appearance of the property or adjacent property. Existing uses can continue to operate. This is evidenced by the rezoning to PM-I district of nearly 9,000 acres in the 1980's.

Second, the proposed rezoning does not change the existing stormwater flows on the property or adjacent property.

Third, the proposed rezoning does not cause the generation of traffic or such other conditions so as to impede adjacent property owners from having access onto their property. Traffic is generated subsequent to receipt of all development permits and project construction. Second, the proposed rezoning does not change the existing stormwater conditions on the property. The existing stormwater conditions will be in existence until such time as all development permits are secured and construction commences. Federal, state, and local stormwater requirements will ensure pre-development stormwater runoff onto any adjacent properties does not exceed post-development runoff.

Fourth, the proposed rezoning does not change the existing potable water and sanitary sewer conditions on the property. Any change to existing condition will require state, federal, and County permitting approval and the imposition of conditions can help protect the potable water supplies and sanitary sewer conditions of adjacent property owner's.

Finally, the proposed rezoning does not generate any noise, vibration, glare, odors or dust. .

Based on the above, it is concluded the application is **in conformance** with this factor because there is no evidence that the rezoning will deter the improvement or development of adjacent property.

13. *Whether the proposed change will constitute a grant of special privilege to an individual owner as contrasted with the public welfare.*

The proposed change will not constitute a grant of special privilege to an individual owner as contrasting with the public welfare. First, Mosaic is not being granted a special privilege - any person with property that is located within the GPM-O designation could request a similar rezoning to PM-I from the Board.

Second, the GPM-O designation protects the public welfare by limiting phosphate mining activities only to that area within its boundaries.

Third, the use of the quasi-judicial public hearing procedures in a rezoning application serves the public welfare and the quasi-judicial public hearing procedures are being applied to the Mosaic rezoning application.

Fourth, the public welfare is being served by separating the rezoning application public hearing from the PMMP and OP applications public hearings. Some other local governments have scheduled all three applications on the same public hearing, which does not advance the public welfare through increased public participation.

Based on the above, it is concluded the application is **in conformance** with this factor based on the finding that the proposed change does not 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.*

There are three substantial reasons why the property cannot be used with its existing A-10 zoning district. First, the property to be rezoned has valuable phosphate resources and the A-10 zoning district does not allow the mining of those phosphate resources.

Second, the areas proposed to be rezoned to PM-I district are located within the GPM-O designation. The Board recognized the value of controlling those areas where phosphate mining could occur and adopted a GPM-O designation to ensure the extraction of valuable phosphate resources are limited to certain areas. The purpose of the GPM-O designation is to allow property with phosphate resources to be rezoned so as to allow phosphate mining.

Third, the inability to extract those resources represents a substantial diminution in the economic value of the property to the owner and in taxes and fees to the County. The owner's economic value should not be arbitrarily denied.

Thus, it is concluded the application is **in conformance** with this factor because there are substantial reasons why the property cannot be used with its existing A-10 zoning.

15. *Whether the change suggested is out of scale with the surrounding area.*

The Development Director notes that the phrase "out-of-scale" is not defined and can be interpreted various ways, such as by size of the property or intensity of development. The application states the rezoning is not out-of-scale with the



surrounding area. First, in 2010 the Board adopted a 25,000-acre GPM-O designation. When adopted, it was envisioned that at some future time, all 25,000-acres would be rezoned to PM-I. The 14,000+ acre rezoning represents 56 percent of the GPM-O.

Second, in 1981, the Board adopted a new zoning district map that rezoned nearly 9,000-acres of land to PM-I district. The proposed 14,000-acre rezoning is 1.56 times larger than the initial PM-I rezoning.

Third, the rezoning does not change the scale of the maximum allowable residential density. That scale is determined by the underlying Rural/Agricultural designation.

Based on the above findings, it is concluded the application is **in conformance** with this factor some evidence has been provided demonstrating the rezoning is not out-of-scale with the surrounding area.

In summary, the Development Director finds the application has addressed all 15 factors. Based on the totality of the circumstances, the Development Director recommends the Ordinance granting the Official Zoning District Atlas amendment application from A-10 to PH-I be adopted.

E. Conditions and Safeguards. LDR Section 12-505 allows the imposition of conditions to safeguard surrounding areas from potential incompatibilities generated by the application.

1. *The Planning Commission may recommend that a rezoning application or an application to amend the LDR be approved subject to conditions and safeguards, including but not limited*

to limiting the use of the property to certain uses provided for in the requested zoning district.

The Development Director concludes that unlike a rezoning to Planned Unit Development, which includes a concept development plan and other development requirements that may be subject to the imposition of conditions, this is a “straight” rezoning and conditions are not warranted. Notwithstanding, conditions may be warranted when the PMMP and OP applications are reviewed.

2. *The Board of County Commissioners, after receiving the recommendation from the Planning Commission on an application for rezoning or an application to amend the LDR, may grant or deny such rezoning or amendment and may make the granting conditional upon such conditions and safeguards as it may deem necessary to ensure compliance with the intent and purposes of the Comprehensive Plan.*

At the duly noticed June 5th and June 6th, 2018 Planning Commission public hearing, the Planning Commission voted 3-2 to recommend that the Board of County Commissioners adopt the proposed Ordinance rezoning the property. The Planning Commission did not recommend the imposition of any conditions. The Board of County Commissions is scheduled to consider the rezoning application at their duly noticed July 24th and July 25th, 2018 public hearing.

F. Public notice requirements. LDR Section 20-1502 requires notice of the date, time and place of the public hearings by the Planning Commission and Board of County Commissioners shall:

1. Be sent at least 10 days in advance of the hearings by mail to ten surrounding property owners or all owners of property within



1,000 feet of the property line of the land subject to the Official Zoning District Atlas amendment application; and

2. Have at least one sign posted on each road frontage; and
3. Be advertised in a newspaper of general circulation in DeSoto County at least 10 days prior to each public hearing.

On May 18th, 2018, the Development Director caused written notice of the hearings to be mailed to all property owners and such notice is on file with the Planning and Zoning Division and incorporated herein by reference. The public hearing notice was advertised in the May 20th, 2018 edition of the Charlotte Sun, a newspaper of general daily circulation in DeSoto County, a copy of which is included in the Proof of Publication (See Agenda Item VI) and which is incorporated herein by reference. The public hearing notice also was advertised in the May 24th, 2018 edition of the Arcadian. A photograph of the signs in place has been provided demonstrating compliance with the property posting requirement (See Attachment 12).

IV. ATTACHMENTS

- Attachment 1: Mosaic owned versus leased lands
- Attachment 2A: Official Zoning District Atlas amendment (RZ 2016-05), All Areas
- Attachment 2B: Official Zoning District Atlas amendment (RZ 2016-05) Excerpt, Area 1
- Attachment 2C: Official Zoning District Atlas amendment (RZ 2016-05) Excerpt, Area 2



- Attachment 2D: Official Zoning District Atlas amendment (RZ 2016-05)
Excerpt, Area 3
- Attachment 2E: Official Zoning District Atlas amendment (RZ 2016-05)
Excerpt, Area 4
- Attachment 3: 2010 Comprehensive Plan, Future Land Use Element
(FLUE) Policies L.1.1 and L.1.2
- Attachment 4: Ordinance 2010-16
- Attachment 5: Ordinance No. 2015-01
- Attachment 6: Proposed Ordinance rezoning 14,057 acres from A-10 to
PM-I district
- Attachment 7: Development Review Committee comments
- Attachment 8: Resolution No. 2018-02
- Attachment 9: Rezoning application consistency with the
Comprehensive Plan
- Attachment 10: SmartCode Transect Zone descriptions
- Attachment 11: Official Zoning District Atlas Proposed Conditions
- Attachment 12: Photographs of Public Notice Sign in Place

V. FINDINGS AND CONCLUSIONS

Based upon the information contained in this Development Review Report, the following findings of fact and conclusions of law are offered:

- A. The Interim 2040 Future Land Use Map includes a Generalized Phosphate Mining Overlay (GPM-O) designation totaling about 25,000-acres. Within the GPM-O designation, about 8,985-acres or 36 percent of the area is zoned Phosphate Mining-Industrial (PM-I) district.
- B. Within the GPM-O, Mosaic owns in fee simple 18,051.7 acres and 4,987.1-acres for which it has minerals interests/controlling rights, for a total of 23,038.8-acres. Of this land, 8,985.4-acres already are zoned PM-I district. The Official Zoning District Atlas shows the remaining Mosaic-owned lands are zoned Agriculture 10, which does not allow phosphate mining. Mosaic Fertilizer, LLC, a subsidiary of Mosaic has filed an Official Zoning District Atlas amendment application to rezone the property to Phosphate Mining – Industrial district, the only zoning district that allows phosphate mining.
- C. On December 14th, 2016, MFL filed three development order applications: an Official Zoning District Atlas (OZDA) amendment application, a Phosphate Mining Master Plan (PMMP) application, and an Operating Permit (OP) application. This report solely addressed the OZDA amendment application.
- D. LDR Section 20-1497 requires the OZDA amendment application be complete, that the completed application be distributed to the DRC for review and comment, and that a written staff report be prepared. The Development Director finds those three actions have been taken and conclude the application is in conformance with LDR Section 20-1497.



- E. LDR Section 20-1498(a) requires an Official Zoning District Atlas amendment application be reviewed and assessed against 15 factors. The Development Director has reviewed the application against the 15 factors and concludes the application addresses the 15 factors.
- F. LDR Section 20-1499 allows the imposition of conditions to safeguard surrounding areas from potential incompatibilities generated by the application. The Development Director finds that it is inappropriate to add conditions to a straight rezoning application.
- G. LDR Section 20-1502 establishes due public notice requirements for Official Zoning District amendment applications and the Development Director finds and concludes the application will be in conformance with LDR Section 20-1502.
- H. At the duly public noticed Planning Commission public hearing held on June 5th and June 6th, 2018, the Planning Commission voted 3-2 to recommend that the Board adopt the proposed Ordinance.

VI. ALTERNATIVE ACTIONS

The Board of County Commissioners may take one of the following alternative actions:

- A. Enter into the record the Development Department Report and all other competent substantial evidence presented at the hearing, and adopt the proposed Ordinance.
- B. Enter into the record the Development Department Report and all other substantial competent evidence presented at the hearing, adopt findings and conclusions to support the recommendation, and do not adopt the proposed Ordinance.

VII. RECOMMENDED ACTION

- A. Development Director recommendation. The Development Director recommends the Board of County Commissioners enter into the record the Development Department Report and all other competent substantial evidence presented at the hearing, and adopt the proposed Ordinance.
- B. Planning Commission action. Commissioner Masters moved to enter into the record the Development Department Report and all other competent substantial evidence presented at the hearing, adopt findings and conclusions to support the recommendation, and forward the record to the Board of County Commissioners with a recommendation that the proposed Ordinance be denied, which motion was seconded by Commissioner Kirkpatrick. Chairperson Martin and Commissioners Masters orally voted to recommend denial of the Ordinance and Vice-Chairperson Hudson and Commissioners Kirkpatrick and Provau voted to recommend approval but Chairperson Martin mistakenly reported that Chairperson Martin, Commissioners Masters, and Commissioner Kirkpatrick voted to recommend denial. Commissioner Kirkpatrick clarified that she seconded the motion in order to vote on the application but she did not support a recommendation of denial.

Due to the confusion, County Attorney Conn advised the Commission to vote on the motion again. On the re-vote, Chairman Martin and Commissioner Masters voted to recommend denial, which motion failed because a majority did not vote to recommend denial.

Commissioner Masters then moved to recommend the application be denied along with a recommendation a moratorium be placed on any rezoning to PM-I district until the existing 9,000 acres is mined and

reclaimed. Commissioner Kirkpatrick seconded the motion. County Attorney Conn stated that motion's inclusion of a moratorium would jeopardize the County's legal position. He noted a property owner has a right to apply for a rezoning and the motion would take away Mosaic's property rights. Consequently, Commissioner Kirkpatrick withdrew her second. There being no second, the motion died.

Commissioner Masters then moved to recommend denial based on factors based on factors 1 (Comprehensive Plan based on compatibility), 7 (living conditions based on noise, light, vibrations, dust, railroad impacts), 8 (traffic congestion based on 370 daily trips and temporary road closures), 9 (drainage based on clay settling areas and hurricanes), 11 (property values based on temporary lost values), 12 (deter improvements based on impacts to water supplies), 13 (special privilege based on public input), and 14 (existing uses because existing uses can continue). Chairperson Martin seconded the motion and the motion failed 2 to 3.

Commissioner Kirkpatrick moved to recommend accepting staff's recommendation to approve the rezoning application. Commission Provau seconded the motion and the motion carried three to two with Chairperson Martin and Commission Masters dissenting. Written public comments receive into the record are included herein by reference and are available on the County's webpage at:

http://desotobocc.com/?/rezoning_applications_2016

- C. Board action. The Board public hearing dates are scheduled for the July 24th, and 25th, 2018 public hearing but additional days may be scheduled if the public hearing cannot be concluded on July 25th, 2018.