



DEVELOPMENT DEPARTMENT REPORT

The matter before the Planning Commission is an Official Zoning District Atlas 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 eleven (11+) non-contiguous areas totaling 14,057.50+acres and generally located west of County Road 661 and north of the theoretical western extension of County Road 760. The item is before the Planning Commission because Land Development Regulations Section 12500 requires the LPA to hold at least one public hearing with due public notice on an Official Zoning District Atlas (i.e., rezoning) amendment application and to make a recommendation on the application to the Board of County Commissioners. *The Development Director recommends Mosaic Fertilizer, LLC file within 90 calendar days an amendment to the application that addresses the deficiencies identified herein.*

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 9,000 people in six countries 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. 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 eleven or more non-contiguous areas totaling 14,057.50± acres and generally located west of County Road 661 and north of the theoretical western extension of County Road 760. This includes 9,482.4 acres that MOS owns fee simple and over 4,575.1 acres for which it has minerals interests/controlling rights. Attachment 1 is a colored map showing the areas to be rezoned to the PM-I district. The map shows what appears to be eleven (11±) areas that are being rezoned but due to the scale of the map, staff cannot confirm the actual number of areas being rezoned. Attachment 2 shows the areas to be rezoned are all located within the Peace River Watershed.

The second application is for the Mining Master Plan (MMP) 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.

Before delving into the rezoning application, it may be useful to gain a general understanding about phosphate, how phosphate is mined, and its benefits and liabilities. Attachment 3 is a primer addressing these issues.

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 13 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 regulations, subdivision regulations, parking and sign regulations), five-year capital improvement plans, and the annual budget.

The 2010 DeSoto County Comprehensive Plan, adopted May 25th, 2004, contained few provisions governing mining and phosphate mining. Future Land Use Element Policy (FLUE) 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 Policy L.1.2 required a reclamation plan as part of the extractive use permit (See Attachment 4).

On September 28th, 2010, the DeSoto County Board of County Commissioners adopted Ordinance No. 2010-26, which amended the Future Land Use Element (FLUE) by adding an objective and implementing policies and amending existing policies pertaining to creation of a Generalized Phosphate Mining Overlay designation (See Attachment 5). The Ordinance also amended the 2030 Future Land Use Map by identifying specific areas where the Generalized Phosphate Mining Overlay designation would apply and added a new map displaying areas within the Overlay where phosphate mining would be prohibited.

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 2001,

Establishment of Zoning Districts; granting to Mosaic Fertilizer, LLC an Official Zoning District Atlas amendment to change from Agriculture 10 (A-10) to Phosphate Mining-Industrial (PM-I) the zoning district of eleven (11+) non-contiguous areas totaling 14,057.50+acres and generally located west of County Road 661 and north of the theoretical western extension of County Road 760, the legal description which is included in Exhibit A; providing for an effective date.

III. DATA & ANALYSIS

The burden of proof is on the Owner to demonstrate in the record and through substantial competent evidence the Official Zoning District Atlas amendment application conforms to the LDR. Such proof must be demonstrated based upon relevant and appropriate data and an analysis. Such proof may include, but is not limited to, surveys, studies, community goals and vision, other data, and expert testimony. To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time the application is filed with the Development Department.

Land Development Regulations (LDR) Article 12, Administration and Enforcement, Section 12500 addresses Official Zoning District Atlas (i.e., rezoning) amendment and LDR text amendment applications. LDR Section 1302 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 (LDR) Article 12, Administration and Enforcement, Section 12502 establishes two prerequisites for the filing of an Official Zoning District Atlas amendment as shown below.

1. *Initiation. Subsection 12502A 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, the property owner, Mosaic Fertilizer, LLC filed with the Development Department a General Development Order and Official Zoning District Atlas amendment (GDO/OZDAA) application and fee (RZ #2016-05), which application and its amendments is included herein by reference. Based on the above, the Development Director concludes the application is **in conformance** with LDR Subsection 12502A because the application was filed by the property owner.

2. *Filing requirements. Subsection 12502B 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 amendment (GDO/OZDAA) application 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. Based on these findings, Development Director concludes the application is **in conformance** with LDR Subsection 12502B.

B. Staff review. LDR Section 12503 addresses staff review

1. *Subsection 12503A 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 the application is complete. Notwithstanding, the Development Director has interpreted the time frames established in Section 12103, 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. In addition, the LDR does not specify the status of the application if the Development Director does not timely review the application for completeness. The Development Director has interpreted this omission to mean the application is automatically accepted and ready for processing. After a quick application review, the Development Director determined not to send a Notice of Incompleteness letter to the Owner. Based on these interpretations and findings, the Development Director concludes the application became complete on December 21st, 2016. Thus, the Development Director finds the application is complete and that the application in **conformance** with LDR Section 12503A.

2. *Subsection 12503B 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 DRC members on and the DRC comments are included herein as **Attachment 7**. Thus, the Development Director finds the application has been processed **in conformance** with the requirements of LDR Subsection 12503B because the application package was distributed to the DRC for review and comments.

3. *Subsection 12503C 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 final staff report required by this section and the Development Director has tentatively scheduled the application for the July 11th, 2017 Planning Commission public hearing. Prior to the preparation of this final staff report, the Development Director distributed to the Owner various draft versions in order to verify the findings and conclusions were accurate. The first draft was provided to Mosaic Fertilizer, LLC on Friday, March 24th, 2017 and Mosaic Fertilizer, LLC has 90 days to file in writing amendments to the application addressing the deficiencies identified herein. The Owner's responses to the staff report were provided to the Development Director on <DATE>. The Development Director then reviewed these comments and prepared a second (or final) draft report.

Thus, the Development Director finds the application has been processed **in conformance** with LDR Section 12503C because a staff report has been prepared and public hearing dates have been scheduled.

- C. **Planning Commission Report.** Subsection 12504A 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.*

The application states the rezoning amendment is consistent with the County's adopted Comprehensive Plan as demonstrated in Attachment 8. The Development Director notes that it has not received a boundary map for each of the eleven (11+) or more areas being rezoned and, consequently, it is premature to make any determination on whether the PM-I boundaries are consistent with the Interim 2040 Future Land Use Map's Generalized Phosphate Mining Overlay District (GPMOD) designation.

In addition to conformance with the GPMOD, the Development Director concludes the rezoning application also should be in conformance with the FLUE Map on 100 Year Floodplains Prohibited Form Extraction (See Attachment 9). The Development Director concludes that Owner lands within the identified map areas should not be rezoned PM-I but should remain A-10. The Development Director finds there is an area being rezoned in Section 13-37-24 that appears to be within the area prohibited from extraction.

2. *The existing land use pattern.*

The application states the rezoning request will allow for the application of the Mining Master Plan (MMP) and Operating Permit (OP) approvals of phosphate mining and related activities that will be a new use in the area. Pre-mining and post-reclamation, the land use pattern will be the same as currently exists, predominantly agricultural use and natural lands. The rezoning request is not unexpected as the properties subject to the rezoning are overlain by the GPMOD, which identifies land containing phosphate minerals and where phosphate mining is planned or likely to occur.

The Development Director finds that the rezoning application is for 11+ or more non-contiguous areas but the application treats the rezoning as

if it were one single area. The Development Director finds the application does not contain substantial competent evidence to support treating each of these 11± or more areas as one. Each of these 11± areas could vary as to surrounding land uses, zoning districts, future land use map designations, typical lot sizes, character of the area, building heights, and functional roadway classification. Without an individual assessments of each of the 11± areas and a conclusion that they are all substantially similar to one another, the application fails to meet the burden of showing the existing pattern can be treated as one area.

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

The application states the proposed amendment will not create an isolated district unrelated to adjacent and nearby districts. Attachment 10 shows the GPMOD boundaries, and the MOS holdings within that boundary by zoning district. The white cross-hatched area are those 6,559.6 acres owned by Mosaic that already are zoned PM-I district. The purple cross-hatched areas are the remaining MOS holding that are zoned A-10 district. The effect of the rezoning appears to be that most or all of the MOS holdings would be consolidated into one area. Notwithstanding, without the individual area maps, the Development Director cannot confirm that an isolated district would not be created.

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 due to the nature of the request, the proposed change will not result in increased population / density and will not impact the availability of public facilities including potable water, sanitary sewer, recreation and

open space (there is no residential component), solid waste, transportation, 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. The application states that due to the nature of the request, the proposed change will not result in increased population / density and will not impact the availability of recreation and open space because there is no residential component. Notwithstanding, the Development Director finds the PM-I zoning district allows as a special exception use single-family dwellings as support for mining. Since the application does not include any guarantee that housing will not be pursued as a special exception use, the Development Director concludes the application does not establish by competent substantial evidence that adequate recreation and open space facilities will be available concurrent with development.

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. The application states that DeSoto Mine's water supply will primarily be from rainfall and groundwater withdrawn from Mosaic's Ft. Green facility in Polk County. This water supply is planned to be piped from Ft. Green withdrawal points to the DeSoto plant, thereby minimizing any impact to aquifer recharge. There are currently no public water or sanitary sewer services in the area. Onsite facilities will be provided to meet the mine needs. The Development Director finds the application does not contain any assurances from Polk County that Mosaic's Ft. Green facility has

sufficient capacity to meet mining needs and that the proposed onsite facilities will meet mining needs. Although these may not be concurrency related issues, they could affect the public health, safety, and general welfare.

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, Landfill Zone 4 about 70 percent of the design capacity has been filled. For level of service analysis purposes, the solid waste LOSS is 2.75 pounds per capita per day. The application states that according to a review of the Solid Waste Element of the Comprehensive Plan, the existing DeSoto County Section 16 Landfill has adequate capacity to serve the solid waste needs of the Mine. Best Management Practices will be instituted once mining is approved that will ensure meeting the adopted level of service for stormwater management. The Development Director finds the application does not identify the amount of solid waste that will be generated from the mine and, therefore, impacts to solid waste facilities cannot presently be determined.

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" pursuant with F.A.C. 14-94.003. All two-lane rural roadways shall also be considered "C." The rezoning application references the transportation analysis included with the MMP application as evidence that the traffic generated by the proposed mine is less than five percent of the roadway capacities and that such roadways will continue to operate within adopted levels of service. The Development Director did not find any roadway analysis in the MMP.

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

The application states that as acknowledged by the subject properties inclusion within the GPMOD, an existing condition is the presence of the phosphate resource. The proposed change to PM-I is consistent with the configuration of the GPMOD. Currently, there are existing properties zoned PM-I by the County adjacent or proximate to this rezoning request, which allow mining. As stated elsewhere in this report, the Development Director needs boundary maps for each area being rezoned and the land uses and conditions in each of those areas. Once that documentation is received, a determination can be made as to whether the existing boundaries are illogically drawn, especially as it related to areas within the 100 year floodplain where extraction is prohibited.

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

The application states the proposed amendment from A-10 to PM-I is necessary to allow for additional applications to conduct phosphate mining within the GPMOD. The proposed mining of the DeSoto Mine is the logical progression of mining in the Central Florida Phosphate District generally trending to the south. The subject property's existing zoning predates the amendment to the Comprehensive Plan adding the GPMOD and the establishment of the PM-I zoning district. Those changes created the new framework for phosphate mining and necessitate this proposed amendment.

The Development Director finds the application proposes to rezone 11± areas but it does not identify when mining activities will commence, when they will terminate, and why it is necessary to rezone those areas now instead of in the future. For those areas that will be mined subsequent to the 2040 planning horizon of the Comprehensive Plan, no documentation was provided to support a finding that the rezoning is necessary at this time.

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

The application states the proposed change will not adversely influence living conditions in the neighborhood. The closest neighborhood is located south of 32nd Street approximately one mile west of the intersection of SR 70 and 32nd Street, approximately two miles to the south of the mine boundary. No land proposed for rezoning is located closer than land already zoned PM-I. Moreover, the DeSoto Mine is located within lands identified as planned for phosphate mining or where phosphate mining is likely to occur. Rezoning of these properties does not automatically grant the Applicant the ability to begin phosphate mining activities, operations or the authorization to mine. Authorization is granted by the County and through the approval of the MMP and OP, which are governed by both Comprehensive Plan policies and Land Development Regulations designed to ensure that phosphate mining will not adversely influence living conditions in the area.

The Development Director finds that 11± areas are proposed to be rezoned and within each area, a map is not provided showing the boundaries of the excavation activities in relationship to the surrounding properties and the existing and reclaimed uses. Thus, the Development Director cannot assess whether the changes will adversely affect the short- and mid-term living conditions in each of the 11± areas. Consequently, the mid- and long-term impacts on the living conditions cannot be assessed.

In addition, the application appears to propose the rezoning of a strip of land that will be used for railways. The rezoning application incorporates the MMP and OP applications by reference. The OP states that up to eight (8) thru train movements will be required daily (at 10 minutes per crossing) but the analysis does not identify what noises and vibrations will result from the usage of this railroad spur, what the days and hours of railroad operation are, and what steps will be taken to mitigate noise and vibrations, especially during the evening hours. The

impacts with this transportation alternative were not addressed in the rezoning application.

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

The application states the proposed change will not create or excessively increase traffic congestion or otherwise affect public safety. The closest neighborhood is located south of 32nd Street approximately one mile west of the intersection of SR 70 and 32nd Street, two miles to the south of the mine boundary. No land is proposed for rezoning is located closer than land already zoned PM-I. Traffic and transportation related analysis is provided with the MMP and OP, and includes analysis of the existing and projected levels of service for the applicable County and State roadway network. The traffic and transportation related analysis submitted with the MMP and OP are hereby incorporated into this application by reference. All applicable permits will be applied for and will received consistency with County and/or State access management requirements.

The Development Director has reviewed the traffic and transportation related analysis provided with the MMP and OP and concludes it does not adequately address this factor because it focuses on traffic concurrency but not public safety. The Appendix 7-4 Table of Contents does not show any analysis of the number of accidents on SR-70, the average delay time associated with an accident, and what alternative routes are available if SR-70 is closed. In the event of a road closure, what alternative roadways would be used and, if local roads are impacted, do those roadways have sufficient pavement width and surface condition to allow the safe navigation of the local roadway network?

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

The application states the proposed change will not create a drainage problem. The rezoning itself does not authorize mining and related activities. Information specific to drainage and stormwater management is required to be provided as part of the MMP and OP applications submitted to the County. Once approved, a ditch and berm system will be constructed (and grassed) around the perimeter of areas to be mined or disturbed. The ditch and berm system is a structural Best Management Practice that has proven effective in the virtual elimination of offsite turbid runoff and soil erosion during the mining and reclamation stages of operation.

The Development Director agrees that the rezoning application will not in itself create a drainage problem and concludes drainage issues are best addressed as part of the MMP, OP, and Improvement Plan applications. Thus, it is concluded the application is in conformance with this factor because the rezoning application does not authorize any specific activity but a range of activities allowed within the zoning district.

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

The application states the proposed change will not seriously reduce light and air to adjacent areas. The MMP and OP applications identify areas of development/mining activities including development setbacks along property boundaries and/or roadways. The applications also address measures to reduce fugitive dust emissions. Due to the proposed setbacks, the performance standards associated with the type of activities permitted consistent with the proposed zoning district, and the structures to be built, air and light are not reduced to adjacent areas.

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

The application states the proposed change is not expected to adversely affect property values in the adjacent area. There are very few homes located in proximity to the Mine and there is only limited demand for additional housing or other development in the area. Uses and activities currently permitted by the zoning of the adjacent lands are not constrained or limited. All lands proposed for rezoning are already located within the GPMOD. Any impacts to adjacent property values could have occurred at the time of GPMOD was put into place. Mining is a temporary land use occurring at only a portion of the Mine at any one time. The reclaimed land will be able to support the same land uses that existed prior to mining.

The Development Director finds that the application does not identify the proposed uses that are proposed to operate within each of the 11± areas and the land uses that are adjacent to each of the 11± areas. Moreover, the application does not indicate whether berms will be constructed in these 11± areas and, if so, the height of the berm, and no study has been provided to show that the construction of berms will not adversely impact property values in the adjacent area. In a study conducted on the impact of noise barriers on the price of adjacent houses based on a repeat sale analysis, that study showed the noise barrier induced 6% decrease in the house prices in their sample in the short run, while it had a stronger negative impact of 11% in the long run.

The Development Director concludes that without a description of the short term and long term uses proposed in each of the 11± areas being rezoned, and whether a berm is being provided, and if so, its location and height and distance from adjacent property owners the application fails to demonstrate through competent substantial evidence that property values will not be adversely impacted.

12. *Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accord with existing regulations.*

The application states all lands proposed for rezoning are already located in the GPMOD. Any deterrent to the improvement or development of the adjacent property could have been occurred at the time the GPMOD was put into place. In addition, the proposed rezoning will not restrict or inhibit permitted uses on adjacent properties as many of these adjacent lands are currently zoned PM-I. Furthermore, post reclamation landscapes will not deter improvement and development on adjacent properties.

The Development Director does not find any study demonstrating that a rezoning to allow phosphate mining would not deter the improvement of development of adjacent property. It is reasonable to assume that the public perception of phosphate mining is that it is a use that creates noise, vibrations, and air and water pollution and said factors would discourage investment and reinvestment in adjacent areas. The burden is on the owner to demonstrate through substantial competent evidence that the changes will not deter improvement and development on adjacent property as compared to non-mined property.

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

The application states the proposed change will not constitute a grant of special privilege to an individual owner as contrasting with the public welfare. The proposed change is within lands identified by the County for phosphate mining. In addition, there are lands within the GPMOD under different ownership and not subject of this application that could request similar approvals from the County.

14. *Whether there are substantial reasons why the property cannot be used in accord with existing zoning.*

The application notes that the current A-10 zoning district does not allow phosphate mining. The proposed rezoning will ensure the orderly development of phosphate mining activities within the GPMOD.

Notwithstanding, the application does not address why property that will not be mined within the Comprehensive Plan's planning horizon should be rezoned at this time. If the property will not be mined within this planning horizon, there is an argument the application is premature.

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

The application states the change is not out of scale with the surrounding area. The proposed change is consistent with the adopted GPMOD, which identifies areas recognized for phosphate mining and related activities.

The Development Director notes that the phrase "out-of-scale" is not defined and can be interpreted various ways. With regard to the size of the area being rezoned, it can be argued it is out-of-scale with the surrounding area, especially if that area is not going to be mined within the Comprehensive Plan's 2040 planning horizon.

In summary, the Development Director finds that additional information is needed before any conclusions and recommendation can be made on the application. Consistent with the intent of Section 12103, Mosaic Fertilizer, LLC shall have 90 calendar days from receipt of this report to file a written amendment to the application addressing the deficiencies identified herein. It should be noted that no weights are assigned to each of these factors and, consequently, the totality of the circumstances must be considered when making a determination on the application.

D. Conditions and Safeguards. LDR Section 12505 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 LDRs 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.

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 LDRs, 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.*

The Board of County Commissioners is tentatively scheduled to consider the application at their duly noticed July 25th, 2017 public hearing. The parties, however, may mutually agree to a different hearing date in order to allow for the application to be amended and to allow staff time to review the amended application.

E. Public notice requirements. LDR Section 12508 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 15 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 15 days prior to each public hearing.

On or before <UNDETERMINED DATE>, Development Department staff caused written notice of the hearings to be mailed to all property owners and such notice is on file with the Division and incorporated herein by reference. A photograph of the signs in place has been provided demonstrating compliance with the property posting requirement (See Attachment 11), and the advertised notice of public hearing, incorporated herein by reference, is included in the Proof of Publication (See Agenda Item VI).

IV. ATTACHMENTS

- Attachment 1: DeSoto Phosphate Overlay Zoning Map Areas to be Rezoned to PM-I designation
- Attachment 2: Peace River Watershed Map
- Attachment 3: Phosphate Mining Primer
- Attachment 4: 2010 Comprehensive Plan, Future Land Use Element (FLUE) Policies L.1.1 and L.1.2
- Attachment 5: Ordinance 2010-16 creating FLUE Objective 1.12.b on Generalized Phosphate Mining Overlay Designation with six implementing policies, amending FLUE Policy 1.1.2 on land use categories, and adding FLUE Policy 1.3.8 on phosphate mining within the Rural/Agriculture designation
- Attachment 6: Proposed Ordinance rezoning 14,057 acres from A-10 to PM-I district
- Attachment 7: Development Review Committee comments (Presently unavailable)
- Attachment 8: Rezoning application consistency with the Comprehensive Plan

Attachment 9: Direct Tributaries – 100 Year Floodplains Prohibited From Extraction

Attachment 10: DeSoto Phosphate Overlay Zoning Map Mosaic Holdings

Attachment 11: 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. Mosaic owns in fee simple 4,482.4 acres and over 4,575.1 acres for which it has minerals interests/controlling rights. These Interim 2040 Future Land Use Map shows these lands are designated Rural/Agriculture with a Generalized Phosphate Mining Overlay designation, which is the only designation that allows phosphate mining. The Official Zoning District Atlas shows this property is 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.
- B. LDR Section 12503A requires the application be complete. Development Director concludes the application is in conformance with Section 12503A based on the finding that the Development Department did not issue any notice of incompleteness.
- C. Development Director finds the application was distributed to the DRC for review and comments, that the DRC's comments have been added as attachments to this report, and concludes the application has been processed in conformance with LDR Section 12503B.
- D. Development Director finds this document is the required written staff report on the application and the application has been tentatively scheduled for the

July 11th, 2017 Planning Commission. Thus, the Development Director concludes the application is in conformance with LDR Section 12503C.

- E. LDR Subsection 12504A 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 needs to be amended to address the substantive deficiencies identified in this report.
- F. LDR Section 12508 establishes due public notice requirements for Official Zoning District amendment applications and the Development Director finds and concludes the application will undergo public notice in conformance with Section 12508.

VI. ALTERNATIVE ACTIONS

The Planning Commission may take one of the following alternative actions:

- A. 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 forward the record to the Board of County Commissioners with a recommendation that the proposed Ordinances be adopted.
- 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 forward the record to the Board of County Commissioners with the recommendation that the proposed Ordinances not be adopted.
- C. 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 forward the record to the Board of County Commissioners with the recommendation that the proposed

Ordinances be adopted with conditions.

- D. Enter into the record the Development Department Report and all other substantial competent evidence presented at the hearing, identify any additional data and analysis needed to support the proposed Ordinances, and forward the record to the Board of County Commissioners with the recommendation that the proposed Ordinances be tabled for up to six months in order to allow staff time to collect and analyze the identified data and analysis needed to make an informed recommendation on the proposed Ordinances.

VII. RECOMMENDED ACTION

- A. Development Director recommendation. Development Director recommends that within 90 calendar days, Mosaic Fertilizer, LLC amend the application in writing to address the deficiencies identified herein.
- B. Planning Commission recommendation. The Planning Commission public hearing dates is tentatively scheduled for the July 11th, 2017 public hearing but may be changed upon agreement of the parties.
- C. Board action. The Board public hearing dates is tentatively scheduled for the July 25th, 2017 public hearing but may be changed upon agreement of the parties.

