Present were:
Priscilla Whisenant Trace, Chairman
Robin DiSabatino, First Vice-Chairman
Carol Whitmore, Second Vice-Chairman
Charles B. Smith, Third Vice-Chairman
Betsy Benac (entered during meeting)
Vanessa Baugh
Stephen R. Jonsson

Also present were:
Charlie Hunsicker, Parks and Natural Resources Director
William Clague, Assistant County Attorney
Quantana Acevedo, Deputy Clerk, Clerk of the Circuit Court

Chairman Trace called the meeting to order at 9:00 a.m.
All witnesses and staff giving testimony were duly sworn.

INVOCATION AND PLEDGE OF ALLEGIANCE
1. The Invocation was delivered by Reverend Tom Winter, followed by the Pledge of Allegiance.

TOURISM/LETTER
Chairman Trace stated it has been requested that she sign a letter to the Florida Watercolor Society for their 47th Annual Exhibition and Reception at ArtCenter Manatee (9/7/18 – 10/26/18).

A motion was made by Commissioner DiSabatino, seconded by Commissioner Baugh, and carried 6-0, with Commissioner Benac absent, to authorize the chairman to execute the letter.

AGENDA
Agenda Update Memorandum
• Items 2-5, Mosaic Fertilizer LLC – Additional public comment (emails from Barbara Angelucci on behalf of Glen Compton and Glen Gibellina)

CITIZEN COMMENTS (Future Agenda Items)
Glen Gibellina stated the County should be mindful of the effects of phosphate mining on tourism.

There being no further citizen comments, Chairman Trace closed citizen comments.
(Enter Commissioner Benac)

(Court Reporter, Denise Maglich, was present)
ADVERTISED PUBLIC HEARINGS (Presentations Scheduled)
2. PARKS AND NATURAL RESOURCES/LOCAL DEVELOPMENT AGREEMENT/WINGATE CREEK MINE
A duly advertised public hearing was held to consider approval of proposed LDA-17-04, Wingate Creek Mine. The Planning Commission recommended approval.

and

3. **PARKS AND NATURAL RESOURCES/LOCAL DEVELOPMENT AGREEMENT/SOUTHEAST TRACT MINE**
   A duly advertised public hearing was held to consider approval of proposed LDA-17-03, Southeast Tract Mine. The Planning Commission recommended approval.

and

4. **RESOLUTION/MASTER MINING PLAN/WINGATE CREEK MINE**
   A duly advertised public hearing was held to consider adoption of proposed Resolution R-18-012, amendment to the Master Mining Plan for the Wingate Creek Mine. The Planning Commission recommended approval.

and

5. **RESOLUTION/MASTER MINING PLAN/SOUTHEAST TRACT MINE**
   A duly advertised public hearing was held to consider adoption of proposed Resolution R-18-013, amendment to the Master Mining Plan for the Southeast Tract Mine. The Planning Commission recommended approval.

No ex–parte communications were disclosed.

Hugh McGuire, attorney, Vinette D. Godelia, attorney, Michelle Tickles, Senior Permitting Specialist, and Darren Stowe, Urban and Regional Planner (all representing Mosaic Fertilizer LLC), utilized a slide presentation to review the Wingate Complex, background (current proceedings specifically required by Manatee County), applications summary, applicable legal standards, DRI (Development of Regional Impact) legislative changes, project overview, current Manatee County approvals for Wingate Operations (components 1-3), changes proposed in pending applications – Wingate Creek, changes proposed in pending applications – Southeast Tract, reclamation schedule, financial assurances, changes proposed in pending applications – Wingate Creek and Southeast Tract, vested rights, project overview – amended master mining plans and local development agreements for Wingate Creek and Southeast Tract, overall consistency with regulations, and request approval of the master mining plan amendments and local development agreements (Agreements) are consistent with applicable County standards.

Discussion proceeded about transitioning from a DRI development order to a local development agreement, the County has the opportunity to create new standards and apply them, and why Mosaic is requesting the time extensions.

Ms. Godelia explained a local government can adopt new standards at any time for any development, which requires a Comprehensive Plan amendment and a Land Development Code (LDC) amendment. This process does not change that ability to amend regulations, but Florida Statutes directs the criteria (what can be accomplished through rescission) to address mitigation components.

Ms. Tickles stated the time extensions are a result of the additional years of mining that are part of the Wingate East approval, which is when mining would recommence at Wingate Creek Mine; therefore the mining end needs to be extended. Mosaic Fertilizer LLC (Mosaic) cannot reclaim those areas until the infrastructure and mined areas have been mined. For the Southeast Tract, timing is associated with the additional years of receiving clays in the clay settling area (CSA) and using the associated infrastructure to deliver the clays. These
approvals will make Wingate Creek Mine consistent with the Wingate East timeline. Wingate Creek mining will be completed in 2021.

Discussion ensued as to mining is not being expanded, end dates for each area, the meaning of Section 380.115(2), Florida Statues, partnership for the Duette Road Bridge replacement, and what was approved in 2017.

Ms. Tickles displayed a Wingate Complex graphic, Map H-3 (Annual Mining Blocks for Wingate Creek) and Map H-7 (Reclamation Schedule for the Southeast Tract) to note the time extension that is being requested for the Southeast Tract is solely associated with the clay settling areas and corridor, and the final date of when they would receive clays from Wingate East. The updated waste disposal regarding the clay settling area includes the Southeast Tract clay settling areas receiving Wingate East clays. Mining in Wingate Creek Mine will take place from 2034 to 2036 with the operation of the corridor through 2037. For the Southeast Tract the areas associated with operations for the clay settling area will receive clays from Wingate East until WE-1 is constructed, clays from Wingate East will be received in order to mine the ISA (Initial Clay Settling Area) at Wingate Creek Mine. The reclamation for the Wingate Creek Mine will proceed through 2041 with the final corridor reclamation in 2042. The timing for the Southeast Tract proceeds through 2034.

Ms. Godelia explained the purpose of Section 380.115(2), Florida Statutes (DRI rescission), is to ensure nothing is lost in translation; that is, if there was a requirement to do it under the development order then you must still have a requirement to do it after the development order is rescinded. In this case, the master mine plan is the development order that is challengeable under law and has the same creditability as the development order itself. If there is something in the development order that is not already reflected in the master mine plan or has not been completed, it must be moved into another approval that will continue to have the same validity. The master mine plan will be the County’s version of the existing authorization that will carry forward the commitment.

Ms. Tickles explained there is an amended condition within the master mining plan (transportation requirements), in which County staff has estimated the cost to be $1.2 million to replace the Duette Road Bridge in a public–private partnership based on the transportation analysis for Wingate East. On February 15, 2017, the Board approved the Wingate East master mining plan, which included a transportation analysis depicting the additional 14 years of operation associated with Wingate East and maintaining the existing provided service of the roadway network under the same transportation route that Wingate Creek Mine currently has approved (Duette Road to S.R. 62 and C.R. 37).

Alissa Powers, Environmental Program Mining Manager, made use of a slide presentation to highlight the Wingate East Mine approvals, Wingate Creek Mine history, Southeast Tract history, master mining plan for Wingate Creek Mine (Wingate Creek reclamation plan, Wingate East waste clay disposal plan, transportation conditions) and master mining plan for Southeast Tract Mine (Southeast Tract reclamation plan, and Southeast Tract Wingate corridor), and staff recommendations.

William Clague, Assistant County Attorney, relayed a “vested right” is a term used occasionally in land use proceedings and is developed out of court decisions. It is defined as the right to use property based upon having received government approval for that use and having acted in reliance on that use. It is not the same thing as simply saying “I have the right to do something with one’s property because of the LDC and Comprehensive Plan.”
this case to phosphate mines that were approved for many years, have been actively mined for a long time, and reliance on those approvals. The DRI statute creates a strong concept of vested rights, but it has become very hard to administer. The applicant is asking the Board to move the vested rights from a DRI development order to the Agreement. The conditions in the DRI are also more questionable as the DRI continues to become outdated. A lot of careful review went into the Agreements to ensure the preservation of existing vested rights and not creating new rights by transferring items from the development orders to the Agreements. Upon question, Mr. Clague confirmed one can be vested against a change in the Comprehensive Plan, but it depends on the specific facts and circumstances of the case.

There was discussion about whether or not County standards are more or less restrictive than State DRI regulations, no additional Statutes were eliminated in the DRI legislation for review of a mine, clay settling areas, does the County have review authority over Ona Mine (Hardee County), and time extensions for Wingate East and the Southeast Tract.

Robert Brown, Environmental Protection Division Manager, explained historically the DRI DO and master mining plans were presented together for approval. There was duplication between the two, but the development order went to Tampa Bay Regional Planning Council (TBRPC) for review of transportation beyond County boundaries. The Florida Department of Environmental Protection (FDEP) has an overview process that includes plans and permits; however, the County’s mining ordinance is very comprehensive. The County has always worked with TBRPC, FDEP, and the Army Corps of Engineers to make sure they are aware of the County’s position, what the LDC states, and that there is compatibility throughout the process.

Ms. Powers explained the clay settling areas that are associated with phosphate mining remain in place and they have a reclamation process, which does include drying out, and the berms with overburden are layered on top after the drying out so that it becomes a usable agricultural land. Processing the ore is a three-part process: ore is mined, sands go back into reclamation areas, and the clays go into the clay settling areas.

Mr. Brown stated there are State standards for mining that are applied by FDEP, and he does not believe there are any other processes. He confirmed the County was a reviewer for the development orders. The County will not officially review Ona Mine, but staff will look at how the operations could potentially impact Manatee County.

Mr. Clague confirmed that the County will not have official review authority for Ona Mine.

Mr. Brown noted trucks move the ore from the beneficiation plant to Four Corners and so forth. Most of the mined materials are moved by pipeline, which decreases the amount of trucks traveling on roads.

Mr. Clague stated he is aware that there are people who disagree with the phase out of the DRI process, which has been resolved in Tallahassee with very little input from counties. Staff and the County Attorney’s office are in favor of moving to the Agreements because, it is becoming difficult to rely on a process that the State created and no longer supports.

Ms. Powers reiterated staff supports the switch from development orders to the Agreements. Wingate Creek Mine is used to process and the Southeast Tract is used to store the clay, while the clay settling areas in Wingate East are being constructed. She explained the drying out process and noted clay settling areas cannot be placed on unmined land.
RECESS/RECONVENE: 10:27 a.m. – 10:38 a.m. All Commissioners were present except Commissioner Baugh.

(Depart Charlie Hunsicker, Parks and Natural Resources Director)

Public Comment

Glen Gibellina submitted documentation and expressed concern that Mosaic has consistently violated laws.

(Enter Commissioner Baugh)

Gina LaBruno submitted letters and expressed concern that the County will be ignoring the disastrous effects of phosphate mining.

Barbara Angelucci highlighted comments from Glen Compton, which were submitted with the agenda update memorandum. She displayed Map B from the staff report for Wingate Creek Mine to question the white areas on the aerial, and the age of Wingate Creek Mine. She advised the Board to look closely at the reclamation history, seek live photographs, and not grant Mosaic vested rights.

David Woodhouse, hydrogeologist, commented on the Lake Wales sinkhole, on a rumor that Mosaic is bankrupt so lawsuits are frivolous, clay settling areas, and water flow through environmental streams and fractures (exhibits displayed).

William Matturro expressed concern about water availability and water use by Mosaic. He questioned if facility investment fees include Mosaic’s water usage and if there is a limit to what can be pumped and supplied without guaranteed salt water intrusion. He suggested the Board delay voting on the items until the County’s water division has conducted an updated study of projected water usage and supply.

Richard Deuble commented on the value of fresh water to the State and expressed concern about the Florida Aquifer. He suggested delaying or denying approval of the requests until a study, which shows that Mosaic’s use of the water is being well managed, has been conducted.

Andy Mele, Suncoast Waterkeeper, endorsed comments submitted by Glen Compton. He utilized photographs to discuss the condition of lands after mining.

There being no additional public comment, Chairman Trace closed public comment.

Discussion proceeded on whether or not the photographs displayed by Mr. Mele are of lands in Manatee County, have the lands in the photographs been mined in the same manner as in the Manatee County, what are the white areas on the aerial map (Exhibit H-5), and cattle grazing on reclaimed lands.

Mr. Mele stated he is unsure if any of the photographs he presented were in the County, because he did not have the global positioning system (GPS) and he could not identify landmarks from the air. He clarified the photographs are typical of areas that have been mined for phosphate, and to his knowledge, the lands depicted in the photographs have been mined in the same manner as in Manatee County.
Ms. Tickles stated without personally taking the photographs or seeing GPS coordinates she could not confirm the lands in the photographs were taken in Manatee County. Within Manatee County, dragline mining is conducted, whereas within Wingate Creek, dredge mining is conducted. The Southeast Tract has completed its mining operations and backfilled everything with the exception of clay settling areas and the operation pipeline corridor. She explained with dredge mining there are no overburden spoils (overburden is the waste rock or other material that is displaced during mining). For the Wingate Creek Mine, the percentage that was reported is the percentage of what is available to be reclaimed, which is taking out the footprint of the corridors that would be coming back from Wingate East and the area associated with initial settling area, plant site and stockpile locations of product (mined ore). The areas remaining have been backfilled with sand tailings (tailings are materials left over after the process of separating the valuable and invaluable fraction an ore) and have been initiated in the reclamation process. There is a portion of Wingate Creek Mine that jaunts to the west and goes due south that is to the west of Winding Creek Subdivision, which has been completely reclaimed, revegetated and ready for monitoring. The areas north of Winding Creek Subdivision reflect recent sand tailings from the last years, which are in a stage of reclamation and have yet to reach their performance standards. In regards to agricultural uses of reclaimed land, Mosaic has leased cattle land for grazing and other agricultural uses and there is a waiting list for those wishing to lease reclaimed lands for grazing purposes.

Discussion continued regarding water use permits, any issues or damage to residential wells in the area, does staff utilize drones for flyovers, bankruptcy, can Gina LaBruno elaborate if she was on well water when she was affected, scrub jay population, and staff evaluation of lands.

Scott Lair, environmental manager for Mosaic, reported the water use permits have specific dates when they need to be renewed. The water use permit for Wingate Creek Mine will expire in 2032. He noted wells in the area are tested weekly, monthly, or quarterly and these results are sent to County staff. He was unsure if any residential wells in the area have been contaminated or tested for contamination.

Ms.Tickles elaborated as part of the environmental monitoring program for Wingate Creek Mine and the Southeast Tract, there is a robust, perimeter monitoring program for groundwater wells including water quality analysis. A program also exists for the adjacent neighborhood, Winding Creek Subdivision, that when new residential wells are installed, Mosaic receives a baseline water sample for future purposes just in case the well shows any type of decline (this requires the homeowner’s willingness to participate). There is annual water quality and quantity data for surface water and groundwater monitoring programs as it relates to the requirements in the environmental monitoring plan that includes analyses based on historical reference ranges that were developed prior to mining or prior to operations. To her knowledge, Mosaic does not have any outstanding impacts to adjacent wells.

Mr. Lair reported Mosaic also has monitoring requirements from the State.

Ms. Powers reported staff flies over the site quarterly to take photographs.

Commissioner Disabatino wanted the applicant to use Google maps to point out Wingate Creek Mine.
Mr. Clague advised Google maps cannot be relied upon as evidence in a quasi–judicial hearing. Commissioner DiSabatino clarified that Google maps depicts Wingate Creek Mine, and she wanted clarification on what lands are in Manatee County.

Mr. Clague further advised the Board to rely only the evidence that has been submitted into the record in terms of aerial photographs. Items from the internet cannot be used as competent and substantial evidence in a public hearing.

Commissioner DiSabatino requested the applicant point out on a detailed map the boundary for Manatee County versus other counties near Wingate Creek Mine.

Jon Faletto, senior corporate counsel for Mosaic, stated Mosaic is far from being bankrupt and the referenced lawsuit was voluntarily dismissed due to the lack of an economic benefit. He expressed willingness to submit Mosaic’s economic balance sheet if the Board desired him to do so, and the County does require economic assurance.

Ms. LaBruno stated that when she lived in Manatee County she did not have well water, and she currently lives in Sarasota County.

Ms. Powers reported the scrub jay relocation program relocates scrub jays onto the Mosaic well field, which is not reclaimed land and adjacent to Duette Park. The program has been successful in relocating and maintaining a population between the site and Duette Park. Gopher tortoises are moved all over, and Mosaic has gopher tortoise relocation permits for several sites that include reclaimed lands. Mosaic has also relocated some listed vegetation into reclaimed land and preserve areas and/or unmined lands as part of operations (includes Wingate Creek and extension area). There are various stages of ongoing reclamation, and there are revegetated areas that are meeting the trajectories for mitigation purposes and vice-versa. The aerial map of Wingate Creek Mine depicts lands in the dry season, and since there has been a full wet season, the areas are revegetating. There are 288 acres that have been reclaimed and released from Wingate Creek Mine following staff review, which is not just a paper review. Reclamation and restoration is not an exact science.

Upon request by Commissioner Whitmore, Ms. Powers relayed her credentials and position with Manatee County.

There was discussion about the other lawsuits regarding the Lake Wales sinkhole, Commissioner Smith has toured Mosaic in the past, other counties (specifically Hardee County) and their agreements with Mosaic, severance taxes, vested water rights that will be changed by requests, and do other counties ask for and/or receive additional monies for any extension permitting.

Mr. Faletto explained a master mining plan is not considered a “deal”, and each County has their own individual rules and regulations for compliance.

Russell Schweiss, land and resource strategies director for Mosaic, explained Hardee County is considered a rural area of critical economic concern, which is a label that the State places on counties with challenging economic aspects. The severance tax law provides a larger benefit for mining in those counties in order to help supplement their revenue. Comprehensive Plan provisions in Hardee County allow for economic mitigation, which is a program where Mosaic works with Hardee County for economic development. Hardee County does not have an interstate or beaches, but they do have agriculture and mining (most of their revenue is generated from mining).
Ms. Tickles stated in regards to vested rights for water usage for the resolutions and Agreements, their water quantity withdrawals lie in the Southwest Florida Water Management District water use permit, which is not associated with any of the requests. The time extensions are not requesting additional water withdrawals not already permitted under the State permit authorization. When Mosaic applied for the time extensions, an application fee was paid, as well as any monitoring fees associated with annual recording.

RECESS/RECONVENE: 11:57 a.m. – 1:29 p.m. All Commissioners were present.

Commissioner Trace recognized Commissioner Baugh’s son and his family who were in attendance.

Applicant Rebuttal

Ms. Tickles displayed the following aerial maps of the southwest portion of Wingate Creek Mine, which were submitted with the annual report (3/31/18):

(a) To point out on Map B the portion of Wingate Creek Mine that has been mined and reclaimed and currently in the monitoring and maintenance phase. The NPDES outfall occurs at the southern end so there is an area that remains in operations prior to the outfall area for water storage; and

(b) To point out on Map A (active operations areas): (1) the undisturbed area that has been reclaimed and will undergo maintenance/monitoring until it meets all of the success criteria; (2) the area that has undergone additional reclamation beyond the contouring and backfilling of sand tailings (seeding and revegetation has been initiated and includes a mitigation wetland); (3) the sand stockpile used for the clay settling area that will be reprocessed for additional phosphate ore prior to construction and reclamation; (4) the active corridor; (5) the ISA; (6) the plant site and associated stockpile areas; (7) the reclaimed wetland system; and (8) the open water areas that have been mined.

Mr. McGuire concluded their rebuttal.

Commissioner Benac stated the DRI development orders transitioning into the Agreements will give the Board more authority to enforce the DRI.

Motion – LDA-17-04

Commissioner Benac moved to recommend adoption of LDA-17-04, Local Development Agreement, for the Wingate Creek Mine and rescission of DRI Development Order Ordinance 13-01, as recommended by staff. The motion was seconded by Commissioner Baugh.

Commissioner DiSabatino noted that she would like to support the citizens who came forward. Unfortunately, the citizens did not produce any evidence to deny the requests in the areas that were mentioned (reclamation and water use permit).

The motion carried 7-0.

Motion – LDA-17-03

Commissioner Benac moved to recommend adoption of LDA-17-03, Local Development Agreement, for the Southeast Tract Mine and rescission of DRI Development Order Ordinance 08-20, as recommended by staff. The motion was seconded by Commissioner Baugh and carried 7-0.
Motion – Resolution R-18-012

Based upon the staff reports, evidence presented, comments made at the public hearing, the action of the Planning Commission and finding the request to be consistent with the Manatee County Comprehensive Plan and Manatee County Ordinance 04-39 ("The Manatee County Phosphate Mining Code") as conditioned herein, Commissioner Baugh moved to recommend adoption of Resolution R-18-012, Master Mining Plan for Wingate Creek Mine, as recommended by staff. The motion was seconded by Commissioner Jonsson and carried 7-0.

Motion – Resolution R-18-013

Based upon the staff report and evidence presented, comments made at the public hearing, the action of the Planning Commission and finding the request to be consistent with Manatee County Ordinance 04-39 and the Manatee County Comprehensive Plan (Ordinance 89-01, as amended), as conditioned herein, Commissioner Baugh moved to recommend adoption of Resolution R-18-013, Master Mining Plan for Southeast Tract Mine as recommended by staff. The motion was seconded by Commissioner Jonsson and carried 7-0.

Commissioner Whitmore sought confirmation that this matter should not be discussed for 30 days.

Mr. Clague confirmed quasi-judicial items should not be discussed due to the challenge period.

COMMISSIONER COMMENTS

Commissioner Benac

• Reminded everyone of the Annual Memorial Day service for veterans at the Veterans’ Monument Park on May 28, 2018, at 9:00 a.m.
• Announced the Memorial Day “Tribute to Heroes” Parade will take place on Sunday, May 27, 2018, on Lakewood Ranch Main Street from 6:00 p.m. to 8:00 p.m.

There were no further comments from Commissioners.

ADJOURN

There being no further business, Chairman Trace adjourned the meeting at 1:39 p.m.

Minutes Approved: ________________