

ORDINANCE NO. 24-28

AN ORDINANCE OF MANATEE COUNTY, FLORIDA, REGARDING PHOSPHATE MINING, AMENDING AND RESTATING MANATEE COUNTY ORDINANCE 04-39, RELATING TO THE REGULATION OF PHOSPHATE MINING AND RECLAMATION ACTIVITIES IN MANATEE COUNTY; AMENDING ARTICLE I, ARTICLE III, ARTICLE IV, AND ARTICLE V OF CHAPTER 2-20 OF THE MANATEE COUNTY CODE OF ORDINANCES, BY AMENDING SECTION 2-20-4, APPLICABILITY; AMENDING SECTION 2-20-10, DEFINITIONS; AMENDING SECTION 2-20-32, EFFECT OF MASTER MINING PLAN APPROVAL; AMENDING SECTION 2-20-33, OPERATING PERMIT APPLICATION SUBMITTAL CRITERIA; AMENDING SECTION 2-20-34, EFFECT OF OPERATING PERMIT APPROVAL; AMENDING SECTION 2-20-41, INITIAL APPLICATION; AMENDING SECTION 2-20-42, ANNUAL PROGRESS REPORTS AND RECLAMATION APPROVAL (RELEASE); AMENDING SECTION 2-20-52, SUBSEQUENT PERMIT PROCEDURES; AND SECTION 2-20-54, WAIVERS; THE EFFECT OF THE AFOREMENTIONED AMENDMENTS UPDATE SEVERAL TERMS AND ALLOW FOR THE ADMINISTRATIVE APPROVAL OF OPERATING PERMITS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED by the Board of County Commissioners of Manatee County, Florida:

Section 1. Purpose and Intent. This ordinance is enacted to modify current Manatee County Ordinance No. 04-39, codified as Section 2-20 of the Manatee County Code of Ordinances, amending and clarifying definitions, approval authority, and mining Operation Permit application submittal criteria and amendments in that regard.

Section 2. Findings. The Board of the County Commissioners relies upon the following findings in the adoption of this Ordinance:

1. Mining cannot be approved unless and until a Master Mining Plan (MMP) has been approved by the Board of County Commissioners. An Operating Permit (OP) is issued when the applicant has demonstrated that proposed site-specific mining operations meet the requirements of the Phosphate Mining Ordinance (Ordinance) and are consistent with a Master Mining Plan.
2. The types of activities addressed in an Operating Permit application includes incidental, site-specific operation details like updates to production schedules, reclamation schedules, clay settling area dispositions & volumes, or sand tailing balances; clarification of timeframes for specific activities like road & tributary crossings with equipment, berm road construction, and reclamation sequences; updates to any required environmental monitoring, summary of surface & groundwater quality baseline data, summary of wetland & nearby water feature hydroperiods; updates to financial assurances like surety & reclamation bonds, which are based on the already-approved amount of ore to be mined and area to be reclaimed; updates to conservation easements & Overriding Public Benefit projects associated with the mine & its approved MMP; updates to Spill Prevention Containment & Response and contingency plans with

updated contacts information, acreages, flow directions, notifications, etc.; and the OP includes a summary reminder of the required elements, such as annual report submittal deadlines, reclamation standards, mitigation and setback requirements, etc., which need to be consistent with the Ordinance and the related MMP. Occasionally, site-specific operation details like noise complaints or dredge disassembly and removal may also be addressed via an OP.

3. Significant mining activities or amendment to the MMP are not addressed via an OP. Examples of significant mining activities or amendments include changes in acreage, mining intensity, transportation facilities, the location or manner of clay settling area construction, or other similar significant activities, which would require Board of County Commission review and approval.
4. The adoption of this Ordinance will streamline the OP approval process by allowing for administrative approval by the Natural Resources Department Director thus maintaining, fostering and preserving the public health, safety and welfare and serving a valid public purpose.
5. The provisions of this Ordinance ensure that phosphate mining activities are conducted in compliance with the Manatee County Comprehensive Plan.

Section 3. Ordinance Text Amendment. Sections 2-20-4, 2-20-10, 2-20-32, 2-20-33, 2-20-34, 2-20-41, 2-20-42, 2-20-52, and 2-20-54 of Chapter 2-20 (“Mining and Reclamation”) of the Manatee County Code of Ordinances are hereby amended as set forth in Exhibit “A” to this Ordinance.

Section 4. Codification. The publisher of the County’s Code of Ordinances, CivicPlus, is hereby directed to codify the substantive amendments to Articles I, III, IV, and V, Sections 2-20-4, 2-20-10, 2-20-32, 2-20-33, 2-20-34, 2-20-41, 2-20-42, 2-20-52, and 2-20-54 of the Code contained in Exhibit “A” of this Ordinance as provided herein. For purposes of codification, words underlined indicate addition to original text, and word ~~stricken~~ indicate deletions from the original text.

Section 5. Severability. If any section, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance.

Section 6. Effective Date. This Ordinance shall become effective as provided by law.

PASSED AND DULY ADOPTED, with a quorum present and voting, by the Board of County Commissioners of Manatee County, Florida this 27th day of February, 2024.

[Signatures are on the following page.]

**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: _____
Mike Rahn, Chairman

**ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER**

By: _____
Deputy Clerk

ORDINANCE NO. 24-28

EXHIBIT "A"

Amendments to Articles I, III, IV, and V, of Section 2-20

Manatee County Code of Ordinances

ARTICLE I. - IN GENERAL

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Sec. 2-20-4. Applicability.

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(5) An applicant seeking approval of a significant amendment to a previously approved master mining plan, may apply for and may be granted a vested rights exemption from one or more of the requirements of this chapter, provided the following conditions are met:

* * *

(b) A significant amendment to a master mining plan shall satisfy the original intent of the county in its approval of the existing master mining plan;

* * *

(d) The board shall make a specific finding that the elements or aspects of a significant amendment to the master mining plan, that are the subject of the vested rights exemption would have met the requirements of the original Ordinance No. 81-22 were it in effect.

Except as provided below, a vested rights exemptions will be considered for approval concurrently with the consideration of the master mining plan or significant amendment thereto, which such vested rights exemption pertains. Provided, however, an applicant may request a single preliminary vested rights exemption, to be considered for approval in advance of the hearings for the application for the master mining plan or significant amendment thereto, which such vested rights exemption pertains (hereinafter, a "preliminary vested rights exemption"). A vested rights exemption shall exempt an applicant from only those requirements of this chapter specifically identified in the vested rights exemption.

(6) An applicant seeking a master mining plan or approval of a significant amendment thereto, may apply for and be granted a specific approval for an exemption from one or more of the requirements of this chapter, provided the following conditions are met:

(c) The board shall make a specific finding that the elements or aspects of the master mining plan or significant amendment thereto, that are the subject of the exemption would have met the requirements of the original Ordinance No. 81-22 were it still in effect.

(d) Following approval of a significant amendment to a master mining plan or a vested rights exemption, an applicant may apply for an operating permit according to the procedures of this Ordinance.

(7) The approval of a master mining plan for which the county received an application before July 1, 2004, shall not be subject to the provisions of this chapter, but shall comply with the original provisions of Ordinance No. 81-22, unless such application expires or is substantially amended to increase the adverse impacts of the subject mining activities, in which case such application will be deemed to have been filed on the date of such amendment.

Sec. 2-20-10. Definitions.

The terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

* * *

Department shall mean the Manatee County Natural Resources Department.

* * *

Operating permit shall mean the written authorization, granted by the director for an applicant to proceed with specified phosphate mining activities for a specified period of time; on a tract unit. An operating permit shall generally require that the applicant provide more site-specific information than that available at the time of master mining plan review.

* * *

Significant amendment shall mean any proposed amendment to a master mining plan that includes: any addition of substantial acreage to be mined; any substantial change in the location or manner of construction of a clay settling area, permanent roads or other transportation facilities; or any other change that might reasonably result in substantially increased adverse impacts.

* * *

Watershed of the Evers Reservoir shall be defined as the geographic area encompassing the land and water surfaces which, by virtue of natural topography, contributes surface water flow to the Evers Reservoir. The Evers Reservoir watershed area shall be as depicted on the future land use maps contained in the Manatee County Comprehensive Plan, or as otherwise delineated by the applicant through the use of appropriate hydrological studies, the results of which are acceptable to the Manatee County Natural Resources and Planning Departments.

Watershed of the Lake Manatee Reservoir shall be defined as the geographic area encompassing the land and water surfaces which, by virtue of natural topography, contributes surface water flow to the Lake Manatee Reservoir. The Lake Manatee Reservoir watershed area shall be as depicted on the future land use maps contained in the Manatee County Comprehensive Plan, or as otherwise delineated by the applicant through the use of appropriate hydrological studies, the results of which are acceptable to the Manatee County Natural Resources and Planning Departments.

Watershed of the Peace River shall mean the geographic area encompassing the land and water surfaces which, by virtue of natural topography, contributes surface water flow to the Peace River. The Peace River watershed shall be as depicted on the future land use maps contained in the Manatee County Comprehensive Plan, or as otherwise delineated by the applicant through the use of appropriate

hydrological studies, the results of which are acceptable to the Manatee County Natural Resources and Planning Departments.

Wetlands shall be as defined in Rule 40D-4.021, F.A.C., as amended, or its successor provisions.

ARTICLE III. - APPLICATION REQUIREMENTS

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Sec. 2-20-32. Effect of master mining plan approval.

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(4) No pre-mining construction activities preparatory to actual mining may be undertaken prior to issuance of an operating permit, unless specifically reviewed by the director and expressly approved by the board as part of master mining plan approval. An applicant desiring to undertake pre-mining construction activities prior to the issuance of an operating permit must submit, in conjunction with the master mining plan application, engineering design drawings and specifications for all proposed activities, and must comply with applicable final site plan requirements of Section 508 of the Land Development Code. Said drawings and specifications and any supporting computations shall be submitted in accordance with section 2-20-33(5) of this chapter. The director may administratively approve pre-mining construction activities if, after reviewing the above-required materials, the director determine that the work is in fact necessary before overburden removal or mineral extraction can be undertaken, and the plans as submitted are in accordance with generally accepted engineering practices

(5) Any pre-mining construction activities that the director may approve shall be consistent with applicable operating permit criteria and shall be conducted at the applicant's risk, should the applicant subsequently fail to comply with operating permit criteria in effect at the time of operating permit application. Approval of such pre-mining construction activities authorizes the applicant to submit all information needed to obtain building permits for approved activities.

Sec. 2-20-33. Operating permit application submittal criteria.

Prior to or subsequent to board approval of the master mining plan, an applicant may submit to the director an operating permit application for the tract unit to be mined. However, the operating permit cannot not be approved unless or until the board approves the master mining plan. An application for an operating permit shall be accompanied by four (4) copies thereof, and shall include the following:

* * *

(16) The fee required for review of an operating permit application, as prescribed in the fee resolution adopted by the board pursuant to section 2-20-9.

Sec. 2-20-34. Effect of operating permit approval.

Approval of an operating permit by the director, pursuant to section 2-20-41, shall entitle the applicant to begin mining activities within a given tract unit. An applicant shall have one year from the date the operating permit is approved or from the date that all appeals have been settled, including appeals of state and federal permits required to commence mining, whichever comes later, to commence mining

activities. If mining activities are not commenced within said time, the director, in their discretion, may extend the operating permit upon a showing of good cause by the applicant. If the director declines to approve an extension, the operating permit shall be considered null and void. Operating permit approvals issued pursuant to the requirements of this chapter shall be valid for a term of five (5) years from the date of approval unless suspended or revoked prior to that time.

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ARTICLE IV. - APPLICATION REVIEW PROCEDURES

Sec. 2-20-41. Initial application.

(1) Within thirty (30) days after receipt of an application for a master mining plan, a significant amendment thereto, or an operating permit, the director shall examine the application and notify the applicant in writing that the application is complete or, alternatively, notify the applicant in writing of any apparent omissions or errors, and request any additional required information. If additional information is required, the applicant shall provide it within thirty (30) days, except that additional time may be allowed by the director if the applicant demonstrates in writing that such extension is reasonable and necessary to prepare the requested information. The director shall have thirty (30) days to review the additional information to determine completeness and shall advise the applicant in writing of such determination. If an applicant decides that the additional information cannot be furnished, the applicant shall advise the director of its position and reasons therefore in writing, and the application shall then be processed as if it were complete. The board may deny an application for a master mining plan or a significant amendment thereto if the applicant, after receiving timely notice, fails to correct errors or omissions or to supply additional information, if such failure results in the requirements of this chapter not being met or unreasonably compromises the ability of the board to determine whether the master mining plan or significant amendment application meets such requirements.

(2) After the director has determined that the application for a master mining plan or operating permit is complete, the applicant shall be notified of such in writing. The application shall be reviewed by appropriate county departments and a master mining plan or significant amendment application shall be referred to the planning commission and board of county commissioners, as applicable, as expeditiously as possible, and in no event more than ninety (90) days after the director has determined the application complete. Applications for master mining plan approval, significant amendment thereto, or for preliminary vested rights exemption related thereto, shall be presented in duly-noticed public hearings before the planning commission and the board of county commissioners. Applications for operating permits shall be approved administratively by the director, no more than ninety (90) days after the director has determined the application complete.

* * *

(4) The planning commission shall hear the master mining plan, significant amendment thereto, or preliminary vested rights exemption; applications under the procedures set forth in section 302.3 of the Land Development Code, as amended or renumbered.

(5) The board shall hear the master mining plan, significant amendment thereto, or preliminary vested rights exemption; applications under the procedures set forth in section 301.1 of the Land

Development Code, as amended or renumbered, and shall render a final decision within a reasonable time after the close of the public hearing.

(6) An operating permit shall be issued to an applicant only if the applicant demonstrates, with competent and substantial evidence, that the operating permit, and all mining activities to be conducted pursuant thereto, will meet the requirements of this chapter and the master mining plan. No operating permit shall be issued to an applicant that has had an operating permit revoked (unless the conditions causing such revocation have been corrected to the satisfaction of the director), or has forfeited any bond or other security posted to comply with this chapter (unless the conditions causing such forfeiture have been corrected to the satisfaction of the director). Consistent with section 2-20-55, applicants may appeal a decision of the director to the board of county commissioners.

(7) No master mining plan, significant amendment thereto, or preliminary vested rights exemption application shall be recommended by the planning commission or approved by the board of county commissioners unless it is found that such application is consistent with the Comprehensive Plan and this chapter.

Sec. 2-20-42. Annual progress reports and reclamation approval (release).

(1) *Annual progress report.* Within forty-five (45) days after the anniversary date of each operating permit approval, the applicant shall file with the director four (4) hard copies of an annual progress report, plus an electronic version in a format acceptable to the director, such as an Adobe Acrobat PDF file, including the following information:

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ARTICLE V. - MASTER MINING PLAN AND OPERATING PERMIT AMENDMENTS, SUBSEQUENT PERMIT PROCEDURES, TRANSFERS, WAIVERS AND APPEAL OF DECISIONS OF THE DIRECTOR

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Sec. 2-20-52. Subsequent permit procedures.

At least six (6) months prior to the expiration of an operating permit, the applicant shall apply for a new operating permit under the provisions of this chapter. The procedures for processing an application for a new operating permit shall follow those prescribed for obtaining an original operating permit. The then-current operating permit shall continue in existence until a final decision on the new permit is rendered by the director. Upon issuance, new permits shall be valid for a period of five (5) years; provided, however, that the director may prescribe a shorter permit term if a previous operating permit was revoked or suspended. The application for a new operating permit shall be accompanied by an appropriate fee, as prescribed in the fee resolution adopted by the board pursuant to section 2-20-9.

Sec. 2-20-54. Waivers.

Except where this chapter expressly prohibits certain actions, the board may, in its discretion, by written instrument, waive any of the requirements of this chapter if the applicant demonstrates that the strict enforcement of such requirement or requirements would impose an unreasonable restriction on the use of the property, and that such waiver would not adversely affect the health, safety and welfare of the public, and is consistent with the Comprehensive Plan. In order to obtain such a waiver, the applicant

shall apply in writing to the director, describing the requirement sought to be waived, the environmental impacts of the requested waiver, and any proposed innovative techniques or alternative procedures to be employed. The board's decision on the application for waiver from requirements of this chapter shall be made after receiving recommendations from appropriate county departments, and after the board holds a duly-noticed public hearing. Public hearings on waiver requests may be held simultaneously with public hearings for approval of a master mining plan, or significant amendment. Notice of requests, hearings and waivers shall also be sent to the appropriate state regulatory agencies by the director, as deemed necessary. No waiver to an operating permit application shall be approved by a director, unless the applicant demonstrates, in accordance with generally accepted engineering practices, that the mining activities pursued under such waiver will meet the requirements of this chapter and the master mining plan. Consistent with section 2-20-55, applicants may appeal a decision of the director to the board of county commissioners.