

# POLK COUNTY DEVELOPMENT REVIEW COMMITTEE STAFF REPORT

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| <b>DRC Date:</b>  | June 26, 2025                  | <b>Level of Review:</b> | Level 4 Review                 |
| <b>PC Date:</b>   | September 10, 2025             | <b>Type:</b>            | LDC Text Amendment             |
| <b>BoCC Date:</b> | October 7, 2025                | <b>Case Numbers:</b>    | LDCT-2025-13                   |
|                   | October 21, 2025               | <b>Case Name:</b>       | Non-Phosphate Mining Exemption |
| <b>Applicant:</b> | Annie Barnes, Stearns & Weaver | <b>Case Planner:</b>    | Ian Nance                      |

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| <b>Request:</b>                  | An applicant-initiated LDC Text Amendment to Sections 227 and 303 to add exemptions for fill material excavation on approved phosphate mining sites. |
| <b>DRC Recommendation:</b>       | Approval   |
| <b>Planning Commission Vote:</b> | Pending  |

## Among the changes to Chapter 2:

- Sections 227 – Add exemption for fill material excavation on approved phosphate mining sites.
- Section 303 – Modifying conditional use criteria to exempt fill material excavation on approved phosphate mining sites.

## Summary:

In most future land use districts, the Land Development Code (LDC) requires a Level 3 Conditional Use application and approval after a public hearing for non-phosphate mining, which includes any soil excavation of more than five feet per acre or 8,000 cubic yards. This is then followed by a Level 2 Review of engineered site plans. Non-phosphate mining activities range from small borrow pits to large-scale sand mines, but the current policy is intended to address the land use activity associated with the extraction of commercially valuable mined materials for ultimate use offsite. Non-phosphate mines are located throughout the County on these different scales, sometimes near residential uses and typically requiring the use of public roads to haul materials and machinery to and from the site.

Conditions for phosphate mining are not directly addressed in the LDC and are subject to Polk County Ordinance 88-19, which outlines specific requirements for phosphate mining, including reclamation, reporting, and siting requirements. Phosphate mines and gypsum stacks are only permissible within the Phosphate Mining (PM) land use district and with a Level 4 Conditional Use (C4) approval from the BoCC.

Non-phosphate mining exemptions for soil and fill excavation are in LDC Sections 227 and 303. This request is to amend these sections to exempt borrow pits associated with site management for

a gypsum stack or phosphate mine from non-phosphate mining requirements. The use of borrow pits is often necessary for the construction and operation of phosphate industry related uses. Adding an exemption precludes redundancy in County review for a previously approved site with an existing, more intensive use.

To receive this exemption and ensure compatibility with surrounding uses, this text amendment requires a distance separation of 1,000-feet from residential areas; requires all fill material to remain on-site; and will require these borrow pits to have approval from FDEP, as is already required for excavation activities on property approved for phosphate mines and gypsum stacks.

This proposal will only be effective on PM land use districts and with an approved phosphate mine or gypsum stack. In circumstances where an exemption is warranted and this text applicable, the County has little to review that the state does not already address. This soil excavation is not intended for commercial sale and will create no additional impacts to the public road system. With these terms, staff recommends approval.

### **Relevant Sections, Policies, and/or Regulations to Consider:**

Comprehensive Plan Policy 2101A-A1 LDC Implementation  
Comprehensive Plan Policy 2.101 Future Land Use Element  
Comprehensive Plan Policy 2.114-B Phosphate Mining Uses  
Comprehensive Plan Policy 2.125-G Non-Phosphate Mining  
LDC Section 227 Filling and Excavating Land  
LDC Section 303 Non-Phosphate Mining  
LDC Section 907 Level 4 Reviews  
Polk County Phosphate Mining Ordinance 88-19

### **Findings of Fact**

- *This is an applicant-initiated Land Development Code (LDC) Text Amendment to Sections 227 and 303 to provide exemptions for fill excavation on approved phosphate mining sites.*
- *LDC Chapter 10 defines Non-Phosphate Mining as, “Extraction of limerock, sand, peat, clay, and soil from the earth for commercial purposes. The term also includes the reclamation of previously mined land; accessory transporting, washing, storage, drying, grinding, and shipping of mined materials; and all other accessory activities reasonably related to the mining process, but not chemical processing.”*
- *LDC Chapter 10 defines Phosphate Mining as, “Extraction of phosphate ore from the earth, including the removal of overburden for the purpose of reaching underlying ore. The term also includes the reclamation of previously mined land; accessory transporting, washing, storage, drying, grinding, and shipping of mined materials; and all other accessory activities reasonably related to the mining process, but not chemical processing.”*

- *In the Phosphate Mining (PM) Future Land Use designation, “Non-Phosphate Mining” is a “C3” conditional use requiring Planning Commission approval. “Phosphate Mining” is a “C4” conditional use requiring BoCC approval.*
- *According to LDC Section 303, “Phosphate mining activities shall comply with Polk County Ordinance 88-19, as amended.”*
- *Polk County Ordinance 88-19 was filed by the Florida Department of State and became effective on October 3, 1988. The purpose of this ordinance is “to regulate the mining of phosphate in a manner that will balance the interests of the phosphate industry with those of the general public; to protect the public health, safety, and general welfare; to insure the orderly development of mineral resources in a manner compatible with the overall development of the county; to conserve natural resources for present and future use; to minimize the adverse impact of mining; to insure that phosphate mining (including debris mining), a temporary land use, is carried out in such a man-ner as not to preclude future normal uses of mined lands; and to insure that phosphate mining activities are consistent with the Polk County Comprehensive Plan.”*
- *Comprehensive Plan POLICY 2.101A-A1 states, “Polk County will implement and update the Land Development Code (LDC) whenever necessary to ensure the public health, safety, and welfare of the citizens of unincorporated Polk County.”*
- *Comprehensive Plan POLICY 2.114-B1: DEVELOPMENT CRITERIA FOR PHOSPHATE MINING states, “Development within these districts shall conform to the following criteria:*
  - a. All activities within lands designated as PM shall be conducted in a manner that will minimize adverse effects upon water quality, fish and wildlife, and adjacent land uses.*
  - b. All mining activities shall require approval through the County's development review procedures. This review will require the approval of a "Conceptual Mine Plan," which shall include, at a minimum:*
    - 1. a "Mine-Area Map" to include, at a minimum, the locations of the mine boundaries, public rights-of-way, existing structures, and environmental features (e.g. topography, watersheds, and any endangered wildlife habitats);*
    - 2. a "Mine-Area Layout" to include, at a minimum, planned locations for beneficiation operations, waste-storage areas, and any proposed permanent structures and/or roads;*
    - 3. a "Reclamation Plan" to include, at a minimum, all information required by applicable state regulations; and*
    - 4. an "Operations Plan" to include, at a minimum:*

- (a) phasing plans,
  - (b) an Impact Mitigation Plan, and
  - (c) a Traffic Circulation Plan showing major access routes to the mine site.
- c. *Once extraction activities are completed, the site shall be reclaimed (where reclamation is required by Chapter 16C-16, FAC) in accordance with the approved Reclamation Plan. Lands mined prior to reclamation requirements may be developed (reclaimed) without having to file a "reclamation plan."*
- *Comprehensive Plan POLICY 2.114-B2: ADJACENT DEVELOPMENT states, "New mining activities shall be setback and/or buffered from existing subdivisions a minimum of 250 feet, and 500 feet from a residential structure ("Polk County Phosphate Mining Ordinance" - Ordinance 88-19), or as otherwise required by applicable law. New residential development on property adjacent to areas designated "PM" on the Future Land Use Map Series shall be required to provide appropriate buffering, if applicable."*
- *According to LDC Section 303, the following activities and uses shall be exempt from the conditions for Non-Phosphate Mining:*
  - a. *Land regulated under the Polk County Ordinance 88-19, regulating Phosphate Mining;*
  - b. *Excavations for bona fide agricultural purposes, including aquiculture, where the overburden/excavated material is not taken off-site;*
  - c. *Land excavations not defined as a mining activity (see definitions, Chapter 10), including excavation of a temporary nature such as for graves, septic tanks, swimming pools, or installation of distribution or transmission lines for electric, fuels, natural gas, water, sewer, telephone, cable or other utilities in public rights-of-way or utility easements. All other necessary permits or authorizations shall be obtained;*
  - d. *Land excavations, other than borrow pits, by authorized units and agencies of government for roadway improvements, surface water management or mosquito control ditches and canals. This provision does not exempt such activities from any other County development regulations;*
  - e. *Excavations for the sole purpose of surface water management, as approved by Polk County;*
  - f. *Mining excavation operations which will extract less than five acre/feet or 8,000 cubic yards of resource over the life of the mine. This exemption shall not apply to*

*any mine site within 1,000 feet of another mine under the same ownership which has been granted an exemption under this provision.*

- g. Soil excavation approved as part of site grading operations for development sites (not solely mining operations) with approved Level 2 Review plans, so long as the duration of the soil removal does not exceed six consecutive months. The Land Development Director may extend the duration up to an additional 90 consecutive days. This shall supersede the exemption provided for in subsection f. above.*
- *Comprehensive Plan POLICY 2.125-G2: NON-PHOSPHATE MINING ACTIVITY DEVELOPMENT CRITERIA states, "Non-phosphate mining shall be subject to the following criteria:*
  - a. Mineral extraction activities shall be conducted in a manner which will minimize adverse effects to water quality, fish and wildlife, and adjacent land uses. Non-phosphate mining shall be permitted only where compatible with existing land uses and Future Land Use designation.*
  - b. All mining activities shall require Board approval through the County's development review procedures. This review will require the approval of a "Mine Plan" which shall include, at a minimum:*
    - 1. a "Mine-Area Map" to include, at a minimum, the locations of the mine boundaries, public rights-of-way, existing structures, and environmental features to include topography, watersheds, and any endangered wildlife habitats;*
    - 2. a "Mine-Area Layout" to include, at a minimum, planned locations for beneficiation operations, waste-storage areas, and any proposed permanent structures and/or roads;*
    - 3. a "Reclamation Plan" to include, at a minimum, all information required by applicable state regulations; and*
    - 4. an "Operations Plan" to include, at a minimum, any phasing plans, an Impact Mitigation Plan, and a Traffic Circulation Plan showing major access routes to the mine site.*
  - c. The decision to permit the mining activity shall be based on an evaluation of the compatibility of the use with surrounding land uses; and the ability to mitigate adverse impacts, including noise, visual, airborne and waterborne pollutants, and traffic impacts.*
  - d. Mineral extraction activities shall not be conducted so as to make the property impractical or impossible for other future uses. Once extraction activities are*

*completed, the site shall be reclaimed in accordance with the approved Reclamation Plan.”*

- *LDC Section 227 establishes filling and excavating requirements in Polk County. The following land use activities are exempted from review under this section:*
  1. *Residential dwellings on lots with a minimum width that is equal to or greater than 80 linear feet;*
  2. *Residential development where the areas in which fill material will be placed no closer than 10 feet from the nearest property line;*
  3. *Residential dwellings that are built on a stem wall foundation;*
  4. *On-site sewage disposal systems installed as permitted by the Florida Department of Health;*
  5. *Mining operations or soil excavation that will extract less than five acre/feet or 8,000 cubic yards of soil from the property when conducted in conjunction with an authorized development order or building permit. This exemption shall not apply to any site within 1,000 feet of another site under the same ownership that has been granted an exemption under this provision;*
  6. *Soil excavation approved as part of site grading operations for development sites (not solely mining operations) with approved Level 2 Review plans, so long as the duration of the soil removal does not exceed six consecutive months. The Land Development Director may extend the duration up to an additional 90 consecutive days. This shall supersede the exemption provided for in subsection 5, above; and*
  7. *Agricultural water management systems regulated by the water management district.*
- *According to the County DataViewer, there are approximately 138,680.20 acres within the PM future land use designation. There are seven active operating permits for phosphate activity in Polk County: Fort Green; Kingsford; Payne Creek; Four Corners; Hookers Prairie; South Fort Meade; and Fort Meade.*
- *LDC Section 912 allows any property owner, BoCC, or agency to apply to the Department to amend the text of this Code, the text of the Comprehensive Plan, or the Future Land Use Map Series (FLUMS) in compliance with procedures prescribed by the Department.*
- *This application has been reviewed for consistency with applicable Comprehensive Plan and LDC policies.*

The Land Development Division, based on the information provided with the proposed text amendment application, finds that the proposed text change request is **CONSISTENT** with the Polk County Land Development Code and the Polk County Comprehensive Plan. Staff recommends **Approval of LDCT-2025-13**.

### **Analysis:**

On August 7, 2024, the Planning Commission voted 7-0 to approve LDCU-2024-18, a request for an +/- 153.23-acre non-phosphate borrow pit needed at the Mosaic New Wales facility to support construction activities for gypsum stack extensions approved in 2015. The closest residential use was over 1.5 miles southeast of the site, and the mining area was approximately 1.6 miles from the nearest public roadway.

Regardless, this action was needed since the excavation of fill material was not specifically exempted by the LDC. This application submitted the necessary documentation required by LDC Section 303 for a non-phosphate mine approval, including reclamation and post-closure plans, to which the phosphate mining is already subject. These plans were then reviewed again through the Level 2 Review process, but since material was not leaving the site, there was nothing for staff to evaluate by this point.

Requiring a Level 3 Review was the result of a grey area in the LDC. The County's definition of non-phosphate mining is that it is intended for commercial purposes. Exemptions are permitted for smaller land clearing activities, but not to the scale required for the work proposed by Mosaic, and which was not for the commercial sale of fill material.

This request allows for an exemption within the LDC for borrow pits associated with site management of a gypsum stack or phosphate mine. This request requires FDEP approval for these borrow pits. Sites with existing phosphate related uses, such as gypsum stacks or phosphate mines, also have prior FDEP approval. FDEP approvals ensure environmentally sensitive lands are properly reviewed and mitigation is provided as necessary.

In addition to FDEP approval, all fill material must remain on-site, eliminating any potential offsite impacts due to hauling of fill material on public streets. Phosphate related uses are only permissible within the PM land use district and, therefore, are already separated from residential areas, but to ensure ongoing compatibility and prevent any potential impact on residential properties, an exemption will require a significant distance separation of 1,000-feet from residential areas.

### **Benefit-cost Analysis of the Amendment**

*Who does it help?*

This amendment provides clarity to existing LDC language and removes redundancy in the approval process. Borrow pits are often necessary to support construction activities at approved phosphate related facilities, including phosphate mines or gypsum stacks, permitted by the LDC or Ordinance 88-19.

*Who does it hurt?*

Staff does not anticipate any harm with this amendment. The language of the amendment only allows this exemption when approvals by the state have been rendered; no fill leaves the site; and there is a 1,000-foot buffer from residential property.

*What is the cost?*

Staff does not anticipate any significant costs with this change. The County saves wear and tear on the roadways as material will not have to be brought in from offsite.

### **Limits of the Proposed Ordinance**

This ordinance will apply to properties only with an approved phosphate mine or gypsum stack within the PM future land use designation.

### **Consistency with the Comprehensive Plan & Land Development Code**

The request is consistent with the Comprehensive Plan and the Land Development Code.

**Comments from Other Agencies:** No Comments

**Draft Ordinance:** Under separate attachment