



STAFF REPORT

Prohibition on Phosphate Mining

ULDC Text Amendment

From: Nicole Galehouse, Interim Planning Manager

Thru: Frank Miles, MPA, Director, Neighborhood
Development Services

Date: October 17, 2018

ORDINANCE NO. 2018-40

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE OF THE CITY OF NORTH PORT, FLORIDA, RELATED TO PHOSPHATE MINING BY AMENDING CHAPTER 14 - EARTHMOVING, DREDGING AND FILL REGULATIONS, ARTICLE I - GENERAL, SECTION 14-9 - PROHIBITED ACTIVITIES, AND BY AMENDING ARTICLE V – DEFINITIONS; PROVIDING FOR ADOPTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODING; AND PROVIDING AN EFFECTIVE DATE.

PROJECT:	TXT-18-165
REQUEST:	Approval of Ordinance 2018-40
APPLICANT:	City of North Port
OWNER:	N/A
LOCATION:	Citywide Ordinance
PROPERTY SIZE:	N/A

I. BACKGROUND

At the April 6, 2017 regular Commission meeting, a presentation was made on the proposed mines in DeSoto County and their potential effects on the Big Slough watershed, which is a major water source within the City of North Port. Following this presentation, Commission directed staff to create an ordinance that would prohibit phosphate mining within the City of North Port.

Phosphate mining involves land clearing, removal of overburden earth to a depth of 15 to 30 feet, removal of phosphate matrix, processing of that matrix to earthen slurry, transmission of that slurry, treatment of that slurry in a beneficiation plant, separation processing, removal of the phosphate, and further storage of waste byproduct operation. Phosphate mining and chemical treatment creates the chemical byproduct phosphogypsum, which contains trace radioactivity and has been determined by the Environmental Protection Agency (EPA) to have few uses, and which must be stockpiled to avoid risk to the public health. Much of Florida's water supply comes from aquifers in highly-permeable limestone formations which are vulnerable to contamination from mining activities and the storage of the phosphogypsum byproduct. Use of these mining and processing procedures poses a risk of contamination through spills and accidents, open pit storage, truck transport on roadways, and activities during mine development. Phosphate mining and processing requires the use of thousands of gallons of water during the transmission and beneficiation processes.

One of the worst effects of phosphate mining is stripping the land of the over burden and the mining pit remains open for so many years prior to required restoration. In many cases wetlands are destroyed and wildlife habitat is lost during the open pit duration. The USACOE Area Wide AEIS report indicate that the Desoto Mine (aka Pine Level and Keyes Tract) can reduce surficial flow in the Big Slough as much as 7%. This may have an impact to the City's water supply especially during drought.

Many parcels within the boundaries of the City of North Port include a reservation of mineral rights. According to the most recent data available from the Sarasota County Property Appraiser, there are at least 72 properties in the City from which the subsurface rights have been split from the surface property. In many cases, property owners may not know that they do not own the mineral rights underneath their homes. The implications are far-reaching, from the possibility of mining operations taking place on site, to property-tax assessment, loan, and insurance issues.

II. REVIEW PROCESS

Staff reviewed this petition for a Text Amendment and found this petition is consistent with the City's Comprehensive Plan. The City Attorney reviewed and approved Ordinance 2018-40 as to form and correctness.

III. DATA & ANALYSIS

Initial research in developing a phosphate mining prohibition raised some concern regarding the City's ability to ban this activity. In searching for best practices, it was not possible to find an ordinance that banned phosphate mining, only ordinances that prescribed very stringent regulations. Staff found that more research was needed to determine if there was a preemption or restriction on local regulation of phosphate mining and referred the matter to the City Attorney's office.

Upon further investigation, the City Attorney's office produced a memo that explained the potential legal implications of such an ordinance, discussing that there is no express preemption, but that there could be an implied preemption. It was also discussed that there may be potential impacts to property rights. The alternative would be to put in place an ordinance which regulates mining activities, which should not create the same legal concerns that an outright ban may raise. The only way to know definitively if there is an implied preemption on local prohibition of phosphate mining is to adopt an ordinance which bans it to test the issue. The memo was reiterated in the response to legal services for the review of Ordinance 2018-40 (**Exhibit A**).

Ordinance 2018-40 as presented adds phosphate mining to the list of prohibited uses that is created in Ordinance 2018-43 (prohibiting well stimulation (fracking) for oil and natural gas extraction). This is part of Chapter 14 of the ULDC, Earthmoving, Dredging and Fill Regulations. Definitions have been added to Article V of Chapter 14, which was also created with Ordinance 2018-43. Please note: if Ordinance 2018-43 is not approved or is amended, Ordinance 2018-40 will need to be revised and potentially readvertised.

COMPREHENSIVE PLAN

Goal 1

Ensure that the character and location of land uses maximize the potential for economic benefit and the enjoyment of natural and man-made resources by citizens while minimizing the threat to health, safety and welfare posed by hazards, nuisances, incompatible land uses, and environmental degradation.

The proposed text amendment minimizes the potential damage to the environment that can come from phosphate mining activities, as well as the related threat to the health, safety, and welfare.

Staff finds that the proposed text amendment is consistent with Goal 1 of the Future Land Use Element.

Policy 9.5

The City land development regulations, consistent with F.S. 163.3202 (1), shall address and regulate activities having the potential to degrade water quality, or impact future and existing wellfields..

Florida Statutes, Section 163.3202(1) provides that the municipality shall amend and enforce land development regulations that are consistent with and implement the adopted Comprehensive Plan. Phosphate mining presents a risk for the contamination of aquifers, which in Florida are highly-permeated limestone formations. Phosphate mining also requires the use of high volumes of water, which could put a large strain on the underlying aquifer system.

Staff finds that the proposed regulation implements the Comprehensive Plan by enacting regulations to protect the City's water quality.

IV. PUBLIC NOTICE & HEARING SCHEDULE

PUBLIC NOTICE

Notice of the public hearing was advertised in a newspaper of general circulation within the City of North Port on October 17, 2018 pursuant to the provisions of Section 166.041(3)(a), Florida Statutes and Section 9.01(b) of the Charter of the City of North Port, and Chapter 1, Article II, Section 1-12 of the City's Unified Land Development Code (ULDC) (**Exhibit B**).

PUBLIC HEARING SCHEDULE

Planning & Zoning Advisory Board Public Hearing	November 1, 2018 9:00 AM or as soon thereafter
City Commission 1st Reading Public Hearing	November 27, 2018 1:00 PM or as soon thereafter
City Commission 2nd Reading Public Hearing	December 11, 2018 6:00 PM or as soon thereafter

V. POSSIBLE ACTIONS

- City Commission could approve of Ordinance 2018-40, prohibiting phosphate mining.
- City Commission could deny approval of Ordinance 2018-40, prohibiting phosphate mining.
- Alternatively, the City Commission could direct staff to create regulations for phosphate mining to provide for standards for the use.