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**MEMORANDUM**

To: Board Members and Pat Lehman

From: Doug Manson and Rob Birrenkott

Re: Counsel Status Report

Date: July 24, 2007

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**Ona Mine and Ft. Green Southern Reserves**

In 1997, IMC Phosphates Company unveiled its plans to operate a phosphate mine on its 20,595-acre property in western Hardee County near the rural community of Ona. IMC submitted the first parts of its consolidated development application to the various permitting agencies in April 2000. The Authority challenged several of the proposed permits regarding the mine on February 11, 2003. Charlotte County, Hardee County, Alan Behrens, and Desoto Citizens Against Pollution, Inc. filed petitions challenging the proposed permits. The DEP referred these petitions to the Division of Administrative Hearings, and Administrative Law Judge Robert E. Meale consolidated them into a single proceeding. Later in the proceeding, Hardee County voluntarily dismissed its petition, and Lee County and Sarasota County petitioned to challenge the proposed permits.

On July 31, 2006, DEP issued a Final Order in this matter. On September 6, 2006 the Board decided to appeal the Final Order. Presently, several parties have submitted their initial appellate briefs. The Authority filed a motion to the 2<sup>nd</sup> DCA which requested the appellate court to relinquish jurisdiction back to the Florida Department of Environmental Protection to consider the recent findings contained within the Peace

River Cumulative Impact Study. The Authority's motion was granted by the 2<sup>nd</sup> DCA. **However, the Florida Department of Environmental Protection Secretary issued a final order which denied the Authority's motion to reopen the case. The Authority's appellate brief is due by August 13<sup>th</sup>.**

According to the Central Florida Regional Planning Council, as a result of the issuance of the Recommended Order by the ALJ, the Application for Development Agreement is being modified to be consistent. Technical meetings are being held to bring the review agencies up to speed. A hearing date is possible.

The Army Corp of Engineers (ACOE) Tampa Office has issued a notice of proposed agency action to issue the section 404 wetlands permit for the entire Ona Mine on March 27, 2006. Mosaic has requested in its section 404 permit, a 21 year permit to mine phosphate that will disturb a total of 2,715 acres if wetlands. After requests were filed by a number of parties including Charlotte and Sarasota Counties, Sierra Club and this Authority, the ACOE granted an extension of the Public Comment period. The Authority filed its comments to Mosaic's permit application on June 26, 2006 and requested that the ACOE deny Mosaic's application as submitted. In addition, prior to any mining being allowed, the ACOE should conduct a cumulative impact assessment. If the ACOE determines to issue the permit, the Authority requested that the permit limit the mining to uplands. If mining is not limited to uplands, then Mosaic should only be allowed to mine within any aquatic system that Mosaic can demonstrate an ability to restore. The ACOE has not made a determination regarding whether to hold a public hearing as of yet either though several agencies have submitted requests for a hearing to be held.

#### South Fort Meade Expansion

On October 13, 2006, the DEP gave notice that Mosaic Fertilizer has submitted applications for an ERP and a Conceptual Reclamation Plan for the purposes of conducting mining activities on the 10,885 acre South Fort Meade Mine- Hardee County (SFMHC). The mine infrastructure needed to facilitate the proposed mining of the SFMHC Tract consists of: (1) a system of mine access corridors, including two crossings of Little Charlie Creek, one crossing each of Lake Dale and Parker Branches, one crossing of an unnamed tributary in Section 2 adjacent to CR 664, and one crossing of an unnamed tributary in Section 24 adjacent to Cowart Road; (2) three clay settling areas; and (3) surface water discharges outfall structures adjacent to Little Charlie Creek, Parker Branch, and an unnamed tributary to the Peace River in Section 2.

**On May 29, 2007, the Army Corps of Engineers issued a Public Notice indicating Mosaic Fertilizer had submitted an application to the Corps for a Section 404 permit. Mosaic is requesting a twenty-one year permit to mine phosphate on a 10,885 acre property. The project is located in wetlands associated with the Peace River. The Corps is currently accepting public comments regarding the project.**

As part of the permitting process for the SFMHC, the Hardee County BOCC requested Mosaic to provide lakes with development potential as part of the reclamation plan. Mosaic submitted variance requests regarding the building of these lakes to DEP.

On October 13, 2006, DEP gave notice of receipt of Mosaic's permanent variance requests from lake littoral zone requirements and water quality requirements for dissolved oxygen for the reclamation lakes on the SFMHC mine.

On November, 29, 2006 DEP issued a notice indicating its approval of Mosaic's mining and reclamation details for the Gilshey Branch Project Area, a 1,466 acre tract located within the southwest portion of the South Fort Meade Mine along the border between Polk and Hardee County. Pursuant to condition number three of the mine wide permit, wetland construction details for areas outside the initial construction phase must be submitted to the DEP for review and approval prior to construction. The project is to disturb 1,000 acres of wetlands for phosphate mining and associated activities, (775 acres of forested wetlands, 186 acres of herbaceous wetlands, 6 acres of shrub marsh, 22 acres of wet pasture, and 8 acres of cattle ponds) and to restore 1,520 acres of wetlands (861 acres of forested wetlands, and 659 acres of herbaceous wetlands) including 1,502 acres of proposed mitigation and 18.5 acres of previously required mitigation. Streams and wetlands within the project area must be constructed in accordance with the guidance report submitted by BCI Scientists and Engineers. In addition, Mosaic is required to acquire an experienced stream restoration scientist to oversee construction.

### Wingate Creek Mine

The Wingate Creek Mine is located in eastern Manatee County. The mine is approximately 7,500 acres in size, comprised of a 3,024-acre parcel originally owned by Nu-Gulf Wingate Holdings, L.L.C. and a 4,400-acre parcel originally leased from the Texaco, Inc. by Nu-Gulf. The 4,400-acre parcel is east of the existing mine area, and west of the proposed Ona site. Wingate Creek is a tributary to the Myakka River, which flows through Manatee, Sarasota, and Charlotte counties on its way to Charlotte Harbor and the Gulf of Mexico. The Authority will continue to monitor the Wingate Creek Mine project, particularly any plans concerning the 4,400-acre parcel which is west of the Ona property.

A report on the mine was presented to the Tampa Bay Regional Planning Council and revealed that 46.9 acres were mined, 10 acres were graded and 4 acres were grassed and mulched this reporting year. To date, a total of 740 acres have been mined, 1,418 acres have been disturbed but not mined, 575 acres have been graded and 530 acres grassed and mulched. FDEP has released 295 acres and Manatee County has released 80 acres following completion of reclamation activities. While mining was temporarily suspended in reporting year 2005-06, the developer expects to revegetate 80 acres during the next reporting year. The report also indicated the project appears to be proceeding in a manner consistent with the Development Order. Manatee County is responsible for ensuring compliance with the terms and conditions of the Development Order.

On April 27, 2007, DEP issued notice of a permit modification to wetland resource permit No. 0095520-006 to Mosaic Fertilizer. The modification is for the reconfiguration and enhancements of the re-configured Wingate Creek channel and the associated post reclamation land use changes. The modification authorizes the relocation of the relocation of 3.7-acres of wetland mitigation. No reduction of mitigation acres is approved with the modification. Wetlands and waters of the state proposed to be impacted are associated with Johnson Creek and Wingate Creek, a tributary to the

Myakka River. The DEP also issued a notice of intent to issue a variance which would apply to dissolved oxygen levels in the hypolimnion (the deepest layer) in the pit impoundments proposed in the modification. On May 29, 2007, the DEP issued a Notice of Final Order approving the variance request.

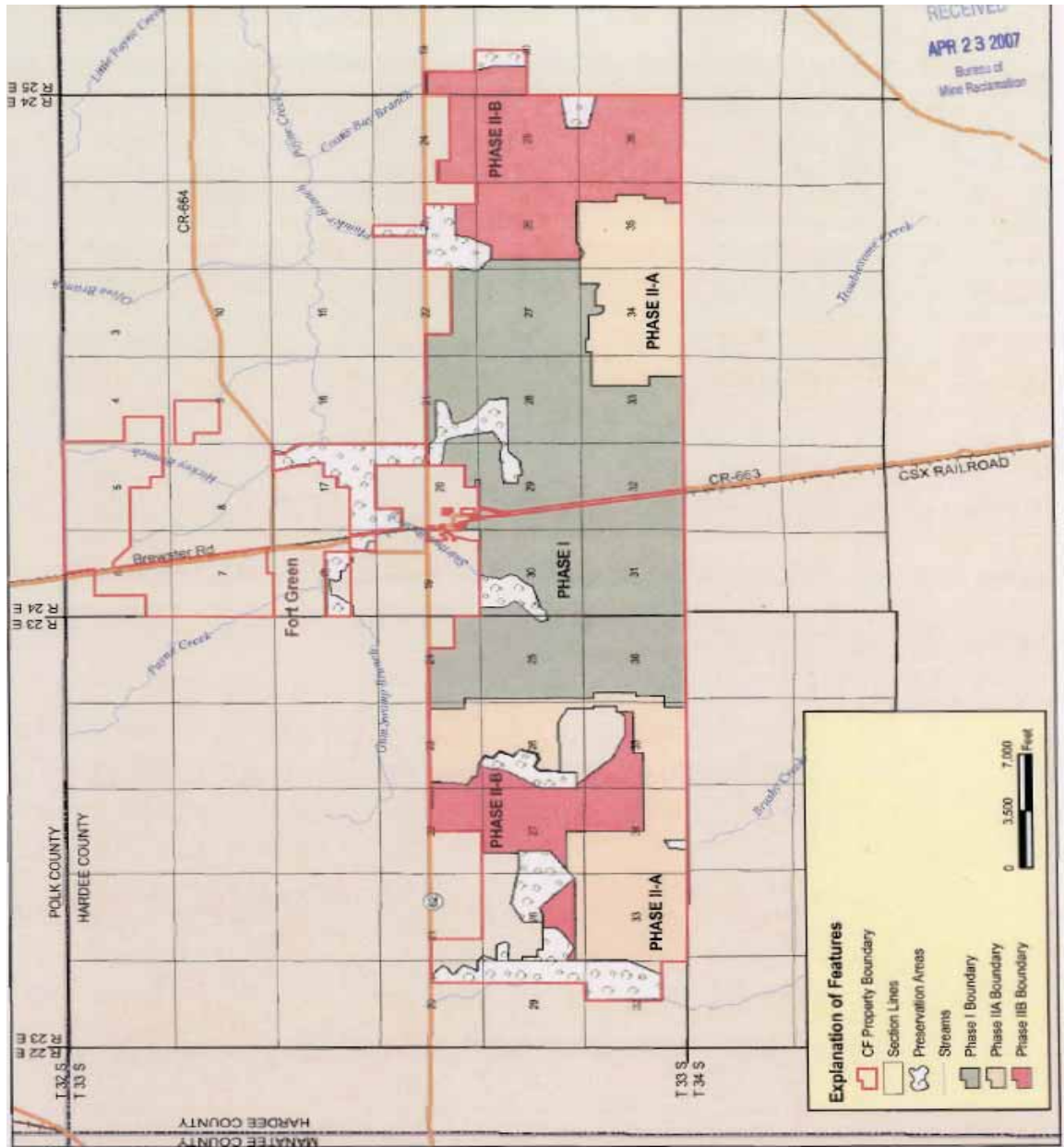
### South Pasture Mine

The South Pasture Mine is located in Hardee County immediately south of State Road 62. CFI divided its South Pasture property into three separate mining areas: A, B, and C. The original ACOE permit and subsequent modifications to that permit approved dredge and fill activities in Areas A and B, which together constitute the middle 6,558-acre portion of the South Pasture property.

On October 24, 2005, DEP acknowledge receipt of CFI Industries' intent to use a Noticed General Permit for minor activities to install a surface water monitoring station at Coons Bay Branch, a tributary of Payne Creek. According to DEP, the project meets the notice of general permit requirements. CFI Industries has five years to complete the project.

On September 25, 2006, the DEP gave notice they were processing CFI's applications for variances from specific provisions of Chapter 62C-16, F.A.C. Pursuant to the provisions of Section 378.212(1)(g), Florida Statutes, CFI is proposing to develop an Aquifer Recharge and Recovery Project (ARRP) in lieu of the currently approved reclamation within a 960 acre portion of the South Pasture Mine. In general terms, the ARRP would involve storing mine stormwater in an existing sand-clay mix area; naturally treating that water through a series of cells consisting of reclaimed wetlands constructed in an adjacent sand-clay mix area; filtering the water through a sand tailings filter basin; and then finally injecting an estimated 2-4 mgd of water into the Floridan aquifer to facilitate aquifer recovery, or for possible future withdrawal. CFI's Hardee Phosphate Complex (including the South Pasture Mine) is located in the Southern Water Use Caution Area ("SWUCA").

On April 25, 2007, the FDEP issued a notice it was processing the "Notice of Disturbance" application and construction details submitted by CF Industries ("CF"), as required by Permit No. 252607909. The permit allows for the ultimate disturbance of 872 acres of FDEP jurisdictional wetlands. CF's submittal is for Phase II-B, a construction area which is 3,451 acres. The construction details submitted to the FDEP requests construction approval for 381 acres of jurisdictional wetlands on Phase II-B. Construction approval for the remainder of Phase II will be sought at a later date. Comments were due to the DEP by May 10, 2007. An outline of the project area is included below.



## Hookers' Prairie

On July 23, 2007 the DEP issued a notice of intent to issue a variance to Mosaic Fertilizer. The variance is from the requirement for a mine operator to file a Conceptual Reclamation Plan Application with the DEP within 7 days of the submittal of an Application for Development Approval (ADA). This variance is associated with the submission of the Mosaic Hookers Prairie Mine Conceptual Reclamation Plan Modification. Mosaic is currently working on a Conceptual Reclamation Plan Modification Application to be submitted by October 9, 2007.

## Peace River Cumulative Impact Study and Resource Management Plan

Both the Cumulative Impact Study and the Resource Management Plan have been released by the DEP. A memorandum summarizing both of these documents was presented to the Board Members on April 4, 2007. A stakeholder meeting was held on May 11, 2007, to discuss the implementation of Resource Management Plan.

## Minimum Flows for the Middle Peace River

SWFWMD is proposing in its updated minimum flow and level schedule to propose a minimum flow for the Lower Peace River in 2007.