

# Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial No.: (850) 425-2207

August 30, 2017

**Via UPS Overnight Mail**

Union County Board of County Commissioners  
c/o James "Jimmy" Tallman, Chairman  
15 NE 1<sup>st</sup> Street  
Lake Butler, FL 32054  
[UCBOCC@WINDSTREAM.NET](mailto:UCBOCC@WINDSTREAM.NET)

*Re: HPS Enterprises II, LLC's Claim for Relief under the Land Use and Environmental Dispute Resolution Act, Section 70.51, Fla. Stat.*

Dear Chairman Tallman:

This law firm has the pleasure of representing HPS Enterprises II, LLC ("HPS") which has an interest in the mining rights to 5,641.07 acres of property in Union County ("Property"). In accordance with the Comprehensive Plan, HPS began the process to develop the Property as a phosphate mine. After the County became aware of HPS's proposed use of the Property, the County began to take actions to prevent HPS's use of its Property. These actions include but are not limited to, enacting a one year moratorium on the processing of mining applications and proposing revisions to its Comprehensive Plan and Land Development Regulations to restrict HPS's ability to mine its Property. And more recently, the County, on January 17, 2017, extended the mining moratorium another year while it continued to revise its Comprehensive Plan and Land Development Regulations.

On July 28, 2017, HPS submitted its application for development approval, in the form of a mining master plan and operating permit application ("Development Application"), to mine the Property. Almost a month later on August 21, 2017, the Commission voted to reject HPS's mining application and return it to HPS based on the moratorium at the advice of the County Attorney.

The County's action in rejecting HPS's Development Application provides HPS an opportunity to request relief under the Florida Land Use and Environmental Dispute Resolution Act ("Act"), Section 70.51, Fla. Stat. First, HPS's Development Application is an application for a "Development Permit" as that term is defined in section 70.51(2)(b), Fla. Stat. Second, the County's rejection of HPS's Development Application is a "Development Order" as that term is defined in section 70.51(2)(a), Fla. Stat.

Most importantly, the Act then provides:

Any owner who believes that a development order . . . is unreasonable or unfairly burdens the use of the owner's real property, may apply within 30 days after receipt of the order or notice of the governmental action for relief under this section.

§ 70.51(3), Fla. Stat.

In accordance with the Act, HPS submits this letter as a formal request for relief under the Act and addresses the items required by section 70.51(6)(a-d), Fla. Stat., below in turn:

(a) *A brief statement of the owner's proposed use of the property.*

The Development Application explains HPS's proposed use of the Property which is to mine phosphate from approximately 4,704 acres from Property consisting of 5,641.07.

(b) *A summary of the development order or description of the enforcement action. A copy of the development order or the documentation of an enforcement action at issue must be attached to the request.*

As noted above, the Development Order is the Commission's vote on August 21, 2017 that rejected and denied the Development Application as prohibited by the moratorium. A copy of the County Attorney's letter stating the same is attached hereto as Exhibit A.

(c) *A brief statement of the impact of the development order or enforcement action on the ability of the owner to achieve the proposed use of the property.*

The County's moratoriums described above – for more than 1.5 years – is preventing HPS from conducting mining operations on the Property which it has a legal right to do. The phosphate reserves on the Property are valued in excess of \$210 million. Each day that HPS is not allowed to mine is a loss of \$18,000 to HPS.

(d) *A certificate of service showing the parties, including the governmental entity, served.*

The Chairman of the Commission is being served a copy of this request by UPS next day air as well as the County Attorney. In addition, the County Attorney and commissioners are being served by electronic mail.

I am not sure if the County is aware or not, but the Act contains some very quick deadlines and timeframes for the dispute resolution process. For example, within 10 days of receipt of this Request, the County must forward the Request to a special magistrate agreed upon between HPS and the County. To that end, HPS would suggest the following potential special magistrates:

Fred Aschauer <http://www.llw-law.com/attorneys/frederick-l-aschauer-jr/>  
(Tallahassee, Hourly Rate - \$ 395)

Sid Ansbacher <http://www.ubulaw.com/attorneys/sidney-f-ansbacher/>  
(St. Augustine, Hourly Rate - \$ 250)

Cliff Shepard <http://shepardfirm.com/attorneys/>  
(Maitland, Hourly Rate - \$ 350)

We request that the County contact us immediately upon receipt of this Request so we can begin the dispute resolution process. Unlike the prior 1.5 years wherein the County and Regional Planning Council Staff refused to engage in any meaningful dialogue, we are hopeful that the County will be open to having such a dialogue in this process.

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It should be noted that HPS has intentionally not filed a lawsuit against the County. Rather, HPS has sought relief under Section 70.51, Fla. Stat., as an alternative method of dispute resolution that affords the County and HPS an opportunity to meet and resolve issues relating to the proposed mining. We are hopeful that issues can be resolved without the need for a lawsuit.

Nothing herein shall be considered a waiver of any rights or causes of action HPS may have against the County as a result of the County's actions.

We look forward to hearing from you. Please direct all responses and correspondence regarding this Request to the undersigned.

Sincerely,

HOPPING GREEN & SAMS, P.A.



D. Kent Safriet  
Timothy Riley  
Attorneys for HPS

Enclosure

cc: Union County Board of County Commissioners at [UCBOCC@WINDSTREAM.NET](mailto:UCBOCC@WINDSTREAM.NET)  
Karen Cossey  
Woody Kitler  
Tommy Nettles  
Travis "Willie" Croft  
Russ Wade, County Attorney at [Wadelaw@gmail.com](mailto:Wadelaw@gmail.com)



## Russell A. Wade III, P.A.

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**Russell A. Wade III**  
Attorney at Law

August 22, 2017

Edward Murawski  
1907 North U.S. Hwy 301  
Suite 100  
Tampa, Florida 33619

RE: Application for special permit for mining

Dear Mr. Murawski:

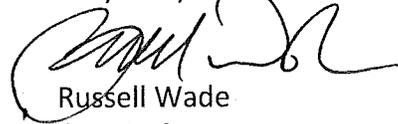
Union County has received via mail your application for Special Permit for Phosphate Mining. However, at this time the application cannot be accepted or processed, pursuant to Union County Ordinances 2016-01 and 2016-03, which established and currently maintain a temporary moratorium on phosphate mining special permit applications.

Section 2 of Ordinance 2016-03, entitled "Prohibition" states:

As to any property located in the unincorporated area of the county, there is hereby declared a moratorium upon the review and approval of phosphate mining special permit applications for a period of one year. No applications for mining special permit approval shall be accepted or processed, and no mining permits shall be issued between February 15, 2016 and February 15, 2017, and during the extended period between February 15, 2017, and February 15, 2018.

Your application packets are available for return at the Union County Board Office. If you have any questions concerning this issue, please do not hesitate to contact me at the number above.

Very Truly Yours,



Russell Wade  
County Attorney