



Interoffice Memorandum

April 13, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development
Services Department

CONTACT PERSON: **David D. Jones, P.E., CEP, Manager**
Environmental Protection Division
(407) 836-1406

SUBJECT: May 11, 2021 – Public Hearing
Lake Underhill 38 Acres, LLC Shoreline Alteration/Dredge and Fill
Permit Application SADF-20-06-013

The applicant, Lake Underhill 38 Acres LLC, is requesting a Shoreline Alteration/Dredge and Fill (SADF) permit to authorize dredging and re-contouring of 0.368 acres of Class I surface waters (ditch) and 0.196 acres of Class III surface waters (ditch), for a total of 0.564 acres of surface water impacts in order to alleviate flooding concerns. This project is located at 8247 Lake Underhill Road, Orlando, FL 32825 in District 3, within the northern portion of Parcel ID No. 25-22-30-0000-00-028.

There have been prior approvals on the subject parcel: Conventional Rezoning RZ-19-10-040 was approved by the Board on January 14, 2020, Preliminary Subdivision Plan PSP-20-02-040 was approved by the Board on January 12, 2021 and Conservation Area Impact (CAI) Permit No. CAI-20-06-039 was staff-issued on December 29, 2020. CAI-20-06-039 authorized impacts to 5.084 acres of Class III wetlands and 0.457 acres of Class III surface waters in order to construct a single-family residential subdivision to be known as the Chickasaw Creek Subdivision.

During the rezoning process, property owners to the north, in the Pinar Subdivision, expressed concerns about the potential for flooding. The applicant agreed to dredge and recontour the ditch as a condition of the rezoning approval.

The ditch has been designated as both a Class I conservation area and a Class III surface water. The Class I portion of the ditch is limited to the western half, where the ditch connects to a large Class I wetland system that extends offsite. The Class III surface water is located along the eastern half of the ditch. Open water and vegetated portions are located along the entirety of the ditch and desirable wetland and aquatic vegetation is present, but limited. Invasive exotic vegetation within the ditch includes Brazilian pepper (*Schinus terebinthifolius*) and Peruvian primrose willow (*Ludwigia peruviana*). The ditch also contains a moderate amount of trash. The work includes the dredging and recontouring of 0.368 acres of Class I

surface waters (ditch) and 0.196 acres of Class III surface waters (ditch), for a total of 0.564 acres.

Orange County Public Works Department has reviewed the proposed project and has no objections. Orange County Roads and Drainage Division will assume maintenance of the ditch, once work is completed.

The ditch was assessed for wildlife habitat and the potential to support listed species, such as wood storks. EPD determined that the ditch was located within a core foraging area of an active wood stork colony and that suitable foraging habitat, although present, was not present in sufficient quantity for the project to adversely affect wood storks. No other listed species were identified nesting or foraging within or in close proximity to the ditch. The loss of habitat for common species that may utilize the ditch, specifically reptiles and amphibians, are expected to be temporary. EPD also assessed the proposed project for the potential to have an adverse drawdown on the adjacent large wetland system to the south and west and determined that the completed work will not have a negative hydrological effect on the adjacent wetlands. Best management practices will be implemented during construction to prevent water quality impacts to offsite areas. The completed project is not expected to result in permanent adverse impacts to wetlands, surface waters or to the wildlife that may utilize these areas.

EPD has evaluated the project pursuant to the eight criteria in Orange County Code, Chapter 15, Article VI, Section 15-218(e) to determine if the project has the potential to cause undesirable effects. Specifically:

- (1) The effect of the proposed plan or development on the use of said waters in said county for transportation and recreational or other public purposes and public conveniences.

EPD Determination: The ditch's function is solely for drainage and is not navigable. Impacts to the ditch are not expected to result in a negative effect on transportation, recreation or other public purposes and conveniences.

- (2) The effect of the proposed plan or development on the free use of waters and waterways within the county.

EPD Determination: The ditch functions for drainage and is not navigable. Impacts to the ditch are not expected to result in a negative effect on the free use of waters and waterways within the county.

- (3) The effect of the proposed plan or development upon erosion control in the said county.

EPD Determination: The applicant will install sediment and erosion control measures during construction and maintain them throughout construction until the side banks of the ditch are permanently stabilized with sod.

- (4) The effect of the proposed plan or development upon the flow of waters in said county.

EPD Determination: The ditch is located downstream of the surrounding drainage area and discharges into an existing large wetland system. Drainage improvements are not expected to have a negative effect upon the flow of waters in the county.

(5) The effect of the proposed plan or development upon formation of stagnant pockets likely to collect debris.

EPD Determination: Drainage improvements to the ditch are not expected to result in the formation of stagnant pockets that are likely to collect debris. The ditch will be perpetually maintained by Orange County.

(6) The effect of the proposed plan or development upon the natural beauty and recreational advantage within said county.

EPD Determination: The ditch provides for drainage conveyance and is not suitable for recreation, nor would improvements to the ditch be expected to reduce the natural beauty of the surrounding area.

(7) The effect of the proposed plan or development upon the conservation of wildlife, marine life, and other natural resources.

EPD Determination: The project is located within a core foraging area of an active wood stork colony and the existing ditch contains some suitable foraging habitat for wood storks. However, due to the limited extent of suitable foraging habitat and the expected foraging habitat that will be present following completion of the project, the project is not expected to result in adverse impacts to wood storks. No other listed species were identified utilizing the ditch. Common wildlife that may utilize the ditch (reptiles, amphibians, fish, etc.) may leave the project area during construction but should return once construction is complete. Impacts to these species are expected to be temporary. Due to the limited amount of desirable wetland and aquatic vegetation located within the ditch, the completed project is not expected to result in an overall loss of desirable wetland or aquatic vegetation.

(8) The effect of the proposed plan or development upon the upland surrounding or necessarily affected by said plan or development.

EPD Determination: The completed project is expected to improve drainage and alleviate flooding within the subdivision to the north.

Staff Findings and Recommendation

Pursuant to Orange County Code, Chapter 15, Article VI, EPD staff has evaluated the proposed SADF permit application and required documentation and has made a finding that the request is consistent with Section 15-218 and recommends approval of SADF Permit No. SADF-20-06-013, subject to the conditions listed below.

Specific Conditions:

1. This permit shall become final and effective upon expiration of the 30-calendar-day appeal period following the date of issuance, unless an appeal has been filed within this timeframe. Any appeal shall stay the effective date of this permit until all appeals are resolved.
2. The operational phase of this permit is effective upon the completion of the construction and continues in perpetuity.

3. Construction activities shall be completed in accordance with the 'Chickasaw Creek North Ditch SADF Grading Plans' prepared by GL Summitt Engineering, Inc and received by EPD on February 18, 2021, and 'Sheet C-200' prepared by AMCON Inc, and received by EPD on October 13, 2020. The permitted activity must commence within six months and be completed within one year from the date of issuance of the permit. In the event that the project has not commenced within six months or has not been completed within one year, this permit shall be void and a new permit application with fee will be required.
4. Dredged material shall be immediately removed from the site and disposed of at an appropriate offsite location, or, if any of the material will be stored within the Chickasaw Creek Subdivision site, the material must be wholly contained within uplands, at least 50-feet from preserved wetlands and contained with appropriate erosion control measures.
5. If dewatering will be required to complete the work, a final dewatering plan must be submitted and approved by EPD prior to the initiation of construction.
6. Final engineering plans and construction plans shall be submitted to EPD for review prior to initiating any dredging activities.
7. Within 60 days of completion of the dredging, the permittee shall provide EPD with an as-built survey of the project area depicting the final elevations of the ditch bottom and side banks to ensure compliance with the permit.
8. The permittee shall notify EPD, in writing, within 30 days of any sale, conveyance, or other transfer of ownership or control of the real property subject to this permit. The permittee shall remain liable for all permit conditions and corrective actions that may be required as a result of any permit violations which occur prior to the transfer of the permit by Orange County to a subsequent owner. If applicable, no permit shall be transferred unless and until adequate financial assurance has been provided and approved by Orange County.
9. For projects which disturb one acre or more of land, or which are less than one acre but are part of a larger common plan of development of sale that is greater than one acre, coverage under a National Pollutant Discharge Elimination System (NPDES) Construction Generic Permit (CGP) is required. Prior to the start of land disturbing activities, which includes demolition, earthwork and/or construction, the operator shall prepare a Stormwater Pollution Prevention Plan (SWPPP) and submit to the Florida Department of Environmental Protection (FDEP) a Notice of Intent (NOI) to obtain coverage under the NPDES CGP, pursuant to the requirements of 62-621.300(4)(a), Florida Administrative Code (F.A.C.) As the Operator of the MS4, copy of the NOI shall also be submitted to the Orange County NPDES Environmental Program Supervisor prior to the start of activities. Copies of the SWPPP, NOI, and FDEP Acknowledgement Letter are to be kept on the project site and made available upon request. Upon completion of all land disturbing activities and after final stabilization of the site is complete, the developer/contractor shall submit to FDEP a Notice of Termination (NOT) to end their coverage under the CGP and provide a copy of the NOT to the Operator(s) of the MS4. A copy of the CGP, NOI and additional information can be found at the following website: <http://dep.state.fl.us/water/stormwater/npdes/construction3.html>.
10. Turbidity and sediment shall be controlled to prevent off-site, unpermitted impacts and violations of water quality standards pursuant to Rules 62-302.500, 62-302.530, and 62-4.242, F.A.C. Best Management Practices (BMPs), as specified in the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (2013, or most current

version), shall be installed and maintained at all locations where there is the possibility of transferring sediment, turbidity, or other pollutants into wetlands and/or surface waters due to the permitted activities. BMPs are performance based; if selected BMPs are ineffective or if site-specific conditions require additional measures, then the permittee shall implement additional or alternative measures as necessary to prevent adverse impacts to wetlands and/or surface waters. Turbidity discharging from a site must not exceed 29 Nephelometric Turbidity Units (NTU) over background for Class III waters and their tributaries or 0 NTU over background for those surface waters and tributaries designated as Outstanding Florida Waters (OFW).

11. Discharge of groundwater from dewatering operations requires approval from FDEP and the applicable Water Management District. The operator/contractor shall obtain an FDEP Generic Permit for the Discharge of Ground Water from Dewatering Operations pursuant to the requirements of Chapters 62-621.300(2)(a) and 62-620, F.A.C., and Chapter 403 FS. Discharges directed to the County's MS4 require an Orange County Right-of-Way Utilization Permit for Dewatering prior to the start of any discharges.
12. No filling of the ditch is approved with this permit.

General Conditions:

13. Subject to the terms and conditions herein, the permittee is hereby authorized to perform or cause to be performed, the impacts shown on the application and approved drawings, plans, and other documents attached hereto or on file with EPD.
14. The permittee binds themselves and their successors to comply with the provisions and conditions of this permit. If EPD determines at any time that activities are not in accordance with the conditions of the permit, work shall cease and the permit may be revoked immediately by the Environmental Protection Officer. Notice of the revocation shall be provided to the permit holder and/or agent promptly thereafter.
15. Prior to construction, the permittee shall clearly designate the limits of construction on-site. The permittee shall advise the contractor that any work outside the limits of construction, including clearing, may be a violation of this permit.
16. Issuance of this permit does not warrant in any way that the permittee has riparian or property rights to construct any structure permitted herein and any such construction is done at the sole risk of the permittee. In the event that any part of the structure permitted herein is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent property owner's riparian or other property rights, the permittee agrees to either obtain written consent or to remove the offending structure or encroachment within 60 days from the date of the adjudication. Failure to comply shall constitute a material breach of this permit and shall be grounds for its immediate revocation.
17. This permit does not release the permittee from complying with all other federal, state, and local laws, ordinances, rules and regulations. Specifically, this permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property rights, or any interest in real property, nor does it authorize any entrance upon or activities upon property which is not owned or

controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 15, Article VI of the Orange County Code.

18. If these permit conditions conflict with those of any other regulatory agency, the permittee shall comply with the most stringent conditions. The permittee shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.
19. The permittee is hereby advised that Section 253.77 Florida Statutes (FS), states that a person may not commence any excavation, construction, or other activity involving the use of sovereignty or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, without obtaining the required lease, license, easement or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees of the Internal Improvement Trust Fund prior to commencing activity on sovereignty lands or other state-owned lands.
20. Should any other regulatory agency require changes to the property or permitted activities, the permittee shall provide written notification to EPD of the change prior to implementation so that a determination can be made whether a permit modification is required.
21. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
22. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
23. EPD staff shall have permission to enter the site at any reasonable time to inspect the project for conformity with the plans and specifications approved by the permit.
24. The permittee shall hold and save the County harmless from all damages, claims or liabilities, which may arise because of the activities authorized by the permit.
25. All costs, including attorney's fees, incurred by the County in enforcing the terms and conditions of this permit shall be required to be paid by the permittee.
26. The permittee agrees that any dispute arising from matters relating to this permit shall be governed by the laws of Florida, and initiated only in Orange County.
27. Pursuant to Section 125.022 FS, issuance of this permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.
28. Pursuant to Section 125.022 FS, the applicant shall obtain all other applicable state or federal permits before commencement of the activity authorized herein.

ACTION REQUESTED: Acceptance of the findings and recommendation of the Environmental Protection Division and approval of Shoreline Alteration/Dredge and Fill Permit SADF-20-06-013 for Lake Underhill 38 Acres, LLC subject to the conditions listed in the staff report. District 3

JW/DDJ: erj

Attachments