



Interoffice Memorandum

August 5, 2020

TO: Mayor Jerry L. Demings
-AND-
Board of 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
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SUBJECT: August 11, 2020 – Public Hearing
City of Cocoa Utilities Department, Conservation Area Impact
Permit Application No. CAI-20-01-002

On January 8, 2020, the Environmental Protection Division (EPD) received an Application for a Conservation Area Impact (CAI) Permit from the City of Cocoa Utilities Department (applicant) for authorization of impacts to Class I and Class III wetlands for improvements to the Claude H. Dyal Water Treatment Plant (WTP). The applicant proposes direct impacts to 0.14 acre of Class I wetlands and 0.37 acre of Class III wetlands and secondary impacts to 0.34 acre of Class I wetlands and 0.38 acre of Class III wetlands in order to realign an access road for safety purposes and to construct additional improvements to the stormwater management system for the WTP.

The project is located on two parcels, one on the eastern side of Taylor Creek Road and one on the western side of Taylor Creek Road. The eastern parcel also abuts State Road (SR) 520. The addresses for the project are 28400 SR 520 and 13850 Taylor Creek Road, Christmas, FL 32709. The Parcel IDs for the project are 20-24-34-0000-00-001 and 20-24-34-0000-00-005, respectively. The subject property is located in Orange County Commission District 4.

The project area on both parcels cumulatively contains 27.45 acres of uplands, 1.24 acres of Class I wetlands, 3.89 acres of Class III wetlands and 0.11 acre of surface water (reservoir). Proposed impacts to wetlands are limited to the parcel east of Taylor Creek Road. No impacts are proposed to the wetlands located west of Taylor Creek Road. No impacts are proposed to the 0.11 acre reservoir.

The eastern parcel includes a mosaic of natural uplands and wetlands north and south of the existing WTP. The majority of onsite wetlands will remain undisturbed. On the north side of the existing facility, the applicant has proposed to construct a new stormwater treatment pond and to realign the existing access road to address safety concerns. Available uplands have been utilized as much as practicable, but due to space constraints, impacts to a Class III wetland that currently abuts the existing facility are unavoidable.

This wetland is mainly a moderate to moderately-high quality mixed-forested system with a vegetative community consisting of a maple, cabbage palm, oak, and bay canopy with appropriate wetland shrubs and ground cover. There is a linear ‘finger’ of the wetland that extends to the west and is approximately 425 feet long by 30 feet wide. This finger is essentially a ditch that appears to have been partially excavated in wetlands around the time the WTP was constructed. The ditch consists of open water areas with invasive/exotic species, including Peruvian primrosewillow (*Ludwigia peruviana*) and Brazilian pepper (*Schinus terebinthifolius*), along the banks. Impacts to this wetland from the project are limited to the wetland ditch (0.30 acre) and to a small edge of the wetland (0.07 acre).

On the eastern side of the existing facility, the applicant is proposing to construct additional stormwater management system improvements. Construction of these improvements will result in 0.14 acre of Class I wetland impacts. This Class I wetland system extends offsite to the south into the forested floodplain of Sweetwater Branch Creek, a tributary of the St. Johns River. The creek connects to the St. Johns River via a culvert under SR 520. The majority of the wetland exists as a healthy and mature mixed-forested system with a canopy of cypress, maple, bay and pine. However, a portion of the northern edge of the wetland was cleared in 1969 when the WTP was constructed, and the remaining edge that lies adjacent to the facility has experienced vegetative and soil disturbance from the historic use of the facility. Wetland vegetation along this edge includes a mixture of appropriate wetland sedges, rushes and other herbaceous wetland plants mixed with lawn grasses and invasive/exotics including Peruvian primrosewillow, torpedograss, Brazilian pepper and grape vine. The proposed impacts will occur to a 0.14-acre edge of the wetland that has experienced the highest level of disturbance.

EPD staff has evaluated the proposed impacts and site plan in accordance with the applicable review criteria. Pursuant to Orange County Code, Chapter 15, Article X, Section 15-396(3)(a), the removal, alteration or encroachment within a Class I conservation area shall only be allowed in cases where no other feasible or practical alternatives exist that will permit a reasonable use of the land or where there is an overriding public benefit. Additionally, pursuant to Section 15-362(5), where wetlands serve a significant and productive environmental function, the public health, safety and welfare require that any alteration or development affecting such lands should be so designed and regulated so as to minimize or eliminate any impact upon the beneficial environmental productivity of such lands, consistent with the development rights of property owners. Finally, pursuant to Section 15-396(3)(c), mitigation for Class III wetlands shall be allowed in all cases.

The applicant has designed the site to avoid and minimize impacts to wetlands as much as possible while working within the constraints of the available space. Impacts are limited to the edge of a Class III wetland (0.07 acre), to a wetland ditch (0.30 acre), and to a highly disturbed portion of a Class I wetland (0.14 acre). Safety and stormwater management system improvements proposed to the WTP under this application are expected to serve both a reasonable use of the land and to provide an overriding public benefit since the WTP provides potable water to the public. Impacts upon the beneficial overall environmental productivity of the Class I wetland is expected to be minimal and has been offset with appropriate mitigation.

To offset direct and secondary impacts to wetlands, the applicant has proposed to purchase 1.77 ratio credits from the Colbert-Cameron Mitigation Bank, which is located in southeastern Volusia County. The proposed wetland impacts are located within the mitigation bank service area, and the mitigation is appropriate and sufficient to offset adverse impacts to wetlands that will occur as a result of the proposed improvements.

Notification of the public hearing was sent via electronic correspondence to the applicant. The applicant does not have an authorized agent. Notification of the adjacent property owners is not required.

There has been no enforcement action taken by EPD on the subject property.

Staff Findings and Recommendation

EPD staff has made a finding that the request is consistent with Orange County Code, Chapter 15, Article X, Sections 15-362(5) and 15-396(3)(a) and (c) and recommends approval of CAI Permit No. CAI-20-01-002, subject to the conditions listed below.

Specific Conditions:

1. This permit shall become final and effective upon expiration of the 30 calendar day period following the date of rendition of the Board's decision approving the permit, unless a petition for writ of certiorari or other legal challenge has been filed within this timeframe. Any timely filed petition or other challenge shall stay the effective date of this permit until the petition or other challenge is resolved in favor of the Board's decision.
2. The operational phase of this permit is effective upon the completion of the construction and continues in perpetuity.
3. The wetland impacts must be completed in accordance with Figure 1 and 2, prepared by CH2M, and received by the Environmental Protection Division (EPD) on June 17, 2020, and the Dredge/Fill Sketches, Sheets 1-12, prepared by Jacobs Engineering and received by EPD on June 5, 2020. Construction shall be completed in accordance with the Overall Site Plan, prepared by Jacobs Engineering, and received by EPD on May 7, 2020 and the Erosion Control Sheets 19, 20, 22, 23 and 24 prepared by Jacobs Engineering, and received by EPD on May 7, 2020. Construction shall be completed within five years from issuance of this permit unless extended in writing. Requests for permit extension must be submitted to EPD prior to the expiration date.
4. Conservation area signs and perimeter fencing shall be installed in accordance with the Dredge/Fill Sketches, Sheet 1-12, prepared by Jacobs Engineering and received by EPD on June 5, 2020. The signs shall be installed prior to the Certificate of Completion.
5. Prior to any filling within the 100-year flood zone, a Flood Plain Permit may be required from the Orange County Stormwater Management Division authorizing the fill.

6. 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.
7. 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>.
8. 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). A copy of the Designer and Reviewer Manual can be found at the following website: <https://www.flrules.org/Gateway/referee.asp?No=Ref-04227>.
9. 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.

10. All excess lumber, scrap wood, trash, garbage, and other similar construction materials shall be removed from the preservation areas immediately.

General Conditions:

11. 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. The permittee binds itself and its successors to comply with the provisions and conditions of this permit. If EPD determines at any time that activities, including without limitation the performance of the required mitigation, 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 promptly thereafter.
12. 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.
13. Construction plans shall be submitted to EPD prior to initiating any construction activities for review and approval. The construction plans shall include, but are not limited to, a site plan clearly depicting the location and acreage of the impact and preservation areas.
14. The permittee shall require the contractor to maintain a copy of this permit, complete with all approved drawings, plans, conditions, attachments, exhibits, and modifications in good condition at the construction site. The permittee shall require the contractor to review the permit prior to commencement of the activity authorized by this permit. The complete permit shall be available upon request by Orange County staff.
15. 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(s) 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.
16. 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 right, 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 X of the Orange County Code. 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.

17. Should any other regulatory agency require changes to the property, permitted activities, or approved mitigation, 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.
18. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
19. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
20. EPD staff, with proper identification, shall have permission to enter the site at any reasonable time to ensure conformity with the plans and specifications approved by the permit.
21. The permittee shall hold and save the County harmless from any and all damages, claims or liabilities, which may arise by reason of the activities authorized by the permit.
22. 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.
23. 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.
24. 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 permittee 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 permittee fails to obtain the 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.
25. Pursuant to Section 125.022, FS, the applicant shall obtain all other applicable state or federal permits before commencement of development.

ACTION REQUESTED: Acceptance of the findings and recommendation of the Environmental Protection Division staff and approval of Conservation Area Impact Permit CAI-20-01-002 for the City of Cocoa Utilities Department Claude H. Dyal Water Treatment Plant, subject to the conditions listed in the staff report. District 4

JW/DDJ: mg

Attachments