

Interoffice Memorandum

DATE: April 29, 2026

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: N/A

FROM: Tanya Wilson, AICP, Director, Planning, Environmental, and Development Services Department

CONTACT: Renée H. Parker, LEP, Manager, Environmental Protection Officer

PHONE: (407) 836-1420

DIVISION: Environmental Protection Division

ACTION REQUESTED:

Acceptance of the findings and recommendation of the Environmental Protection Division staff and denial of the After-the-Fact Shoreline Alteration/Dredge and Fill Permit Modification, SADF-23-09-022-MOD, for Eric and Rhonda Powell. District 1. (Environmental Protection Division)

PROJECT: Request for After-the-Fact Shoreline Alteration/Dredge and Fill Permit Modification for Eric and Rhonda Powell (SADF-23-09-022-MOD)

PURPOSE: The applicants, Eric and Rhonda Powell, are requesting an After-the-Fact Shoreline Alteration/Dredge and Fill Permit Modification (SADF) to modify a previously issued permit to include an additional section of new vinyl seawall and modify the location for part of the new vinyl seawall, along the shoreline of a canal leading to Lake Butler (aka Sandy Shores Canal). The property is located at 12023 Sandy Shores Drive, Windermere, FL 34786, (Parcel ID No. 24-23-27-7808-00-083) in District 1.

Site History:

On July 12, 2023, the Environmental Protection Division (EPD) investigated a complaint of unauthorized shoreline clearing. Shoreline vegetation, including trees, were cleared at the subject property without the required Orange County permits. EPD staff documented that no sediment and erosion controls were installed to prevent water quality violations from occurring, and uncontained turbidity was seen within the canal during the initial inspection. Therefore, EPD issued a Notice of Violation (Enforcement Case #23-625669) on August 2, 2023. An administrative penalty of \$4,998.75 was assessed for the violations.

On August 7, 2023, EPD staff conducted a follow up inspection of the property and observed that clearing activities were ceased, and a silt fence was installed to stabilize the bank. Additionally, payment of the penalty was remitted to the Conservation Trust Fund on January 10, 2024. Approximately one month after the inspection, the applicants submitted a permit application to construct a seawall, as discussed below, which was later approved, so restoration of the canal bank was not required. On April 24, 2024, EPD closed the incident.

On September 11, 2023, the EPD received a Shoreline Alteration/Dredge and Fill (SADF) Permit Application, SADF-23-09-022, for the subject property requesting authorization to construct approximately 180 feet of new vinyl seawall along the shoreline of the Sandy Shores Canal, with a 10-foot return on both ends, and to authorize the excavation of 136 cubic yards of material (above and below the Normal High Water Elevation (NHWE)) in the northwest corner of the site in order to construct a boat dock. Because the seawall is located on a canal, no riprap or plantings were requested due to the potential to create navigational concerns in the canal.

On April 9, 2024, the Board of County Commissioners (Board) unanimously approved the Shoreline Alteration/Dredge and Fill Permit Application, SADF-23-09-022 at a public hearing. On April 25, 2024, EPD issued SADF-23-09-022 to the applicants.

During review and processing of the SADF application, the applicants submitted a Dock Construction Permit Application, No. BD-23-09-122. The dock was proposed to attach to the seawall and located within the area to be dredged at the northwestern corner of the applicant's property. The dock permit application met the criteria and design standards in Chapter 15, Article IX, and on December 18, 2023, EPD issued Dock Construction Permit BD-23-09-122 to the applicants, contingent upon approval of the SADF Permit. On February 17, 2025, EPD issued a time extension for construction of the dock, No. BD-23-09-122-EXT.

On May 8, 2025, an as-built survey for the boat dock was received by EPD, on which the seawall was also depicted. EPD staff determined that neither the seawall nor the boat dock were built according to approved plans. The dock location is approximately 4.7 feet further waterward than permitted. Additionally, EPD determined that weepholes in the seawall had not been installed as required by permit, and that the seawall had not been constructed as permitted in two areas; the northwest section and the northeast end.

During and after construction of the seawall, other issues with the project were documented. The majority of the seawall and dock construction work was to be done from land, and no obstruction to navigation within the canal was anticipated. However, EPD staff received photos showing that a turbidity barrier was placed across the canal which blocked navigation. Additionally, the SADF permit included a water quality monitoring plan which detailed how background water quality conditions and work area water quality conditions during the dredging activities were to be monitored. The applicants were required to submit water quality monitoring reports to EPD 30 days prior

to the first dredge sampling event, weekly during the dredge activities, and twice after the dredging events. No water quality monitoring results or reports were submitted to EPD.

On May 14, 2025, EPD issued a Notice of Non-Compliance for the seawall and boat dock which provided the applicants the option to either rebuild in accordance with the approved plans or submit a request for a permit modification to attempt to receive approval for the changes. The Notice of Non-Compliance stated that the dock permit modification may not be approved if the dock location was deemed a navigational hazard by EPD. The Notice of Non-Compliance assessed a penalty of \$375, pursuant to Chapter 15, Article IX, Section 15-353, for failure to obtain a permit prior to modifying the dock. The penalty was remitted to the Conservation Trust Fund on November 6, 2025.

On June 19, 2025, the applicants submitted an after-the-fact permit modification application for the seawall seeking authorization to keep the seawall as constructed. On that same date, the applicants submitted an after-the-fact permit modification application for the boat dock to attempt to keep the boat dock as constructed (BD-23-09-122-MOD).

On August 28, 2025, EPD assessed a penalty of \$4,998.75 for failure to complete seawall construction activities in accordance with the approved plans in SADF-23-09-022. On August 29, 2025, the applicants requested that the penalty be reduced. The penalty has not been paid nor has a penalty reduction been granted to date.

Staff Analysis:

ATF SADF Permit Application:

The applicants seek approval, after-the-fact, of a new location for two sections of the existing seawall;

- the northeast end of the seawall which extends approximately 12.5 feet further along the shoreline than permitted.
- a section in the northwest portion of the seawall was constructed approximately 2.5 feet further waterward than permitted.

Northeast Location:

The applicants seek authorization to allow for a 12.5-foot section of the seawall at the northeast end of the property to remain. The seawall in this area was permitted to be built along the wetland line, ending at the western boundary of a private utility easement. The seawall was constructed one foot waterward of the wetland line, and extends approximately 12.5 feet into the utility easement, ending just before the property line. As this is a private easement, Orange County Utilities has no concerns with this encroachment. The wetland impacts from the seawall at the eastern end of the property were calculated to be de minimis, and no mitigation is required. EPD staff have no concerns regarding navigation related to this wall extension.

Northwest Location:

The applicants seek authorization to allow a section approximately 27 feet in length at the northwest end of the property to remain. SADF-23-09-022 authorized the excavation of 136 cubic yards of land. The seawall was constructed further waterward than authorized on the approved plans (see below).

Staff Analysis and Findings:

EPD staff reviewed as-built surveys, aerial photos, gathered independent data on canal depths and widths, code criteria and other documentation. EPD finds that the placement of the northwest section of the seawall, located adjacent to the boat dock, was constructed in a location approximately 2.5 feet more waterward than authorized on the approved plans, and contributes to the restriction of navigation through the canal. Additionally, EPD staff finds that the applicants have failed to demonstrate that the structure does not affect the public's use of the waterways, as several objections to the seawall permit modification have been received, citing navigational and safety issues resulting from the compound effects of the seawall and dock placement on the corner of the subject property further waterward than authorized.

Based on a review of the application and supplemental information provided, EPD staff have determined that the seawall modification cannot be supported pursuant to the criteria listed in Chapter 33, Article IV, Section 33-129(e):

1. *Section 33-129(e)(1), "The effect of the proposed plan or development on the use of said waters in said district for transportation and recreational or other public purposes and public conveniences."*
2. *Section 33-129(e)(2), "The effect of the proposed plan or development on the free use of waters and waterways within the district."*

EPD has received multiple objections from residents who reside along the canal:

- Camie Ogren-Jessen and Kristin Ogren, 12050 Sandy Shores Drive
- David Brasch, 12024 Sandy Shores Drive
- Victoria De Torres, 12043 Sandy Shores Drive

The objections include concerns that the seawall and dock extend farther into the canal than permitted, thereby creating a navigation hazard and reducing visibility for boaters. The objectors also note that placement of the structures near the bend in the canal limits maneuverability and restricts access for larger vessels. Several residents emphasized additional safety concerns tied to the dock's location and the already narrow width of the canal.

On March 30, 2026, the applicants were sent a notification letter that informed them of EPD's intent to recommend denial at the public hearing.

In accordance with Orange County Code, Chapter 33, Article IV, Section 33-129(d), notification of the public hearing was sent to all property owners within 500 feet of the project site.

Pursuant to Orange County Code, Chapter 33, Article IV, EPD has evaluated the proposed SADF permit application and required documents and has made a finding that the request is inconsistent with Section 33-129.

Dock Construction:

During the review of BD-23-09-122, EPD determined that the dock, as proposed, did not pose any navigational concerns, as the property owner had proposed to remove several feet of uplands from their property. However, in the current condition, the dock extends more waterward than permitted in BD-23-09-122. BD-23-09-122-MOD seeks authorization to allow the dock to remain as constructed and is currently under review by EPD.

EPD requested supplemental information from the Orange County Public Works Department Survey Section, who provided distances from the outer corners of the boat dock to the NHWE on the opposite banks of the canal. These measurements were used to confirm canal widths adjacent to the subject property and to calculate the percentage of the canal width occupied by the boat dock.

A primary factor in EPD's Work Instruction No. EPD-WI-2000-47, a guiding policy document used to help assess a structure's potential impact on navigation, is an assessment of the width of any canal on which a structure is proposed, and how far a proposed structure extends into a canal. No dock shall extend more than one-third (1/3) of the width of any canal. In the narrowest portion of the applicants' frontage on the Sandy Shores Canal, located at the northeast corner of the dock, the dock extends approximately one-third (1/3) of the way into the canal. While the applicants' dock meets the guideline, the Sandy Shores Canal experiences low water conditions, during which the navigable width of the canal is significantly decreased due to the shallow bank on the northern side of the canal. The navigable width is further reduced by the applicants' boat dock on the southern side of the canal. To support their findings, EPD staff collected transect measurements of canal depths. Based on these measurements, the dock extends into the navigation channel of the canal.

Pursuant to Ch. 15, Article IX, Sec. 15-322. - Policy, purpose, intent and scope. (e) *A purpose of this article is to regulate the construction of docks such that the navigation of surface waters is not unreasonably impeded.* Additionally, Sec. 15-342. - Conditions for issuance of dock construction permits states, (a) *To obtain a dock construction permit, the following criteria must be satisfied: (3) The dock must not adversely affect the rights of other persons or other property owner's use of, and access to, the surface water or constitute a navigation hazard, as determined by EPD or law enforcement. No work should be done within areas that constitute easements for ingress or egress or for drainage unless authorized by the county.*

EPD does not support the current location of the dock due to navigational concerns. Accordingly, if the Board agrees with staff's recommendation and denies SADF-23-09-022-MOD, the application to modify the dock will be denied by staff and the applicants will be required to move the dock landward, concurrent with the seawall. If the Board decides to approve SADF-23-09-022-MOD, EPD will require the applicant to make modifications to the waterward portion of the dock to reduce potential impacts to navigation.

Staff Recommendation

Staff recommend denial of the requested SADF Permit Modification. However, should the Board not accept staff's recommendation of denial and decide to approve the SADF Permit Modification, the approval shall be subject to the following conditions:

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 construction and continues in perpetuity.
3. In the event that the permitted activity has not been completed within two years, the Environmental Protection Officer may grant a permit extension of up to one additional year. Requests for permit extension must be submitted to EPD prior to the expiration date. No changes to the approved plans will be authorized with a permit extension.
4. This permit does not authorize any dredging or filling, other than that depicted on the approved plans for the installation of the seawall.
5. 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(70), and 62-4.242, Florida Administrative Code (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 permittees 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 0 NTU over background for those surface waters and tributaries designated as Outstanding Florida Waters (OFWs), such as Lake Butler.

In the event that turbidity samples collected at the background sampling station exceed 0 NTU, dredging shall be stopped and EPD notified immediately.

6. Discharge of groundwater from dewatering operations requires approval from the Florida Department of Environmental Protection (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.

General Conditions

7. A copy of this permit, along with EPD stamped and approved drawings, should be taken to the Orange County Zoning Division (OCZD) at 201 South Rosalind Avenue for review prior to applying for a Building Permit. For further information, please contact the OCZD at (407) 836-5525.
8. After approval by OCZD, the certified site plans will need to be reviewed by the Orange County Building Safety Division (OCBSD) in order to obtain a Building Permit. For further information, please contact the OCBSD at (407) 836-5550.
9. Subject to the terms and conditions herein, the permittees are 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 permittees bind themselves and any 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 promptly thereafter.
10. Issuance of this permit does not warrant in any way that the permittees have riparian or property rights to construct any structure permitted herein and any such construction is done at the sole risk of the permittees. 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 owners' riparian or other property rights, the permittees agree 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.
11. This permit does not release the permittees 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 permittees or create in the permittees 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 permittees, or convey any rights or privileges other than those specified in the permit and Chapter 33, Article IV of the Orange County Code. If these permit conditions conflict with those of any other regulatory agency, the permittees shall comply with the most stringent conditions. The permittees shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.

12. The permittees are hereby advised that Section 253.77 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 permittees are responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
13. Should any other regulatory agency require changes to the property or permitted activities, the permittees 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.
14. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
15. The permittees shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate. EPD may revoke the permit upon discovery of information that may cause pollution to water bodies, cause an adverse impact on the riparian rights of other waterfront property owners, or impede the traditional use and enjoyment of the waterbody by the public.
16. 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.
17. The permittees shall notify EPD, in writing, within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located. The permittees shall remain liable for any corrective actions that may be required as a result of any permit violations until the permit is legally transferred.
18. The permittees 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.

19. 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 permittees.
20. The permittees agree that any dispute arising from matters relating to this permit shall be governed by the laws of Florida and initiated only in Orange County.
21. 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 applicants 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 applicants fail 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.
22. Pursuant to Section 125.022 FS, the applicants shall obtain all other applicable state or federal permits before commencement of construction.

BUDGET: N/A