

Interoffice Memorandum

DATE: September 9, 2025

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

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 After-the-Fact Conservation Area Impact Permit CAI-23-12-059 for Kimberly Anh Pham. District 4. (Environmental Protection Division)

PROJECT: October 14, 2025 – Public Hearing for After-the-Fact Conservation Area Impact Permit Application for Kimberly Anh Pham (Application No. CAI-23-12-059)

PURPOSE: The applicant, Kimberly Anh Pham, is requesting an After-the-Fact Conservation Area Impact (CAI) permit for Class I wetland impacts associated with the construction of a single-family residence with related improvements. The project site is located at 13450 E Lake Mary Jane Road, Orlando, FL 32832, on the northern shoreline of Lake Mary Jane in District 4. The Parcel ID for the site is 23-24-31-0000-00-003.

The project is being reviewed under the prior version of Article X, Conservation Areas Ordinance, adopted in 1987, since the application was received prior to the effective date of June 1, 2024 for the updated Article X.

Site Conditions

The site contains a single-family residence (and associated infrastructure) and consists of approximately 3.94 acres of Class I wetlands and 0.15 acre of uplands in the northeastern corner of the parcel where the driveway begins along the roadway. The driveway continues across the wetland line; the entire rest of the homesite is located in historic wetlands.

Background

According to historic aerials, the subject lot was undeveloped prior to 1987. In 1989, a building permit was issued (to a previous property owner) for the construction of a single-

family home and associated infrastructure (B89020017). The home is visible in 1994 aerial photos. In 1998, building permits were issued to construct a swimming pool (B98001259) and to erect a screened enclosure around the pool/patio (B98005216). Neither the Environmental Protection Division (EPD) nor the applicant have been able to locate County or State issued permits authorizing the wetland impacts associated with the construction of the original homesite (house, garage, driveway, etc.) or the pool/patio addition. Therefore, mitigation for these direct wetland impacts was never provided.

In 2008 (after the property ownership had changed several times), EPD investigated a complaint on the subject parcel regarding unauthorized wetland impacts. According to historic aerials and the Florida Department of Environmental Protection's (FDEP) enforcement case file, approximately 0.43 acre of wetlands surrounding the homesite had been impacted without authorization. In response to EPD's resulting Enforcement Case (No. 08-214753), the property owner (at the time) completed a Conservation Area Determination (CAD 08-076). At that time, almost the entire parcel except a 0.41 acre area in the northeastern corner of the parcel was determined to be wetlands. The same property owner then applied for a Conservation Area Impact (CAI) Permit; however, EPD closed the application due to non-response to a Request for Additional Information letter. EPD also closed Enforcement Case 08-214753, as the FDEP indicated they would take the lead on pursuing the enforcement/compliance issues. On May 21, 2013, FDEP issued the property owner (at the time) a letter stating the site was in compliance and that the case was closed.

EPD also previously issued permits to construct a boat dock on the subject parcel: BD 90-011 was issued in 1990 to construct the original boat dock; BD 08-034 was issued in 2008 to construction a replacement boat dock. Both permits were issued to previous property owners.

The applicant purchased the property on October 20, 2020. Aerial imagery from the period of 2014 (after resolution of the 2008 FEDP enforcement case) through 2020 depict a forested wetland surrounding the home. On June 13, 2022, EPD investigated a new complaint of unauthorized wetland clearing and subsequently issued a Notice of Violation (NOV) (Enforcement Case No. 22-609452) on July 5, 2022, which required remittance of an administrative penalty and restoration of impacted wetlands. These impacts, which included clearance of wetland vegetation (including trees), fill material in the wetland, and new structures in the wetland, can be seen in 2021 aerial imagery. In response to the NOV, the applicant submitted a CAI Permit Application (CAI-23-12-059) on December 5, 2023 to attempt to permit some of the impacts after-the-fact. On May 7, 2024, the applicant remitted an administrative penalty in the amount of \$10,000 for the most recent unauthorized wetland impacts.

Current Request

The applicant proposes to permit the following after-the-fact structures/features that have been erected since their purchase of the parcel: a 0.04 acre paver driveway extension (located immediately adjacent to the original driveway), a 0.026 acre covered patio (located at the rear of the home, adjacent to the original pool/patio), and a 0.022 acre deck (located immediately adjacent to the 0.026 acre covered patio).

Additionally, since no authorization for wetland impacts was ever obtained for the original 1989 homesite, the 1998 pool/patio additions, a 0.022 acre concrete parking area (placed in approximately 2004 by a previous property owner), and a 0.002 acre treehouse (constructed at an unknown time, sometime prior to the applicant's purchase of the parcel) through any environmental agency (neither EPD nor FDEP), and mitigation was never provided for the wetland impacts associated with these structures, EPD is requiring that mitigation for them be included in the subject application. In total, these features sum to 0.484 acre of wetland impacts.

The status of a restoration plan for the site, as related to the current enforcement case, remains pending subject to the outcome of the impact permit request. The applicant will be required to restore any wetland areas subject to this application that are not approved for impact.

Analysis of Chapter 15, Article X (adopted in 1987)

Section 15-362(5), states, *"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."*

- Staff Analysis: It is unclear why the 0.04 acre paver driveway extension, the 0.022 acre deck, or the 0.022 acre concrete parking area are necessary for the home, as the lot already contains an adequately sized, paved driveway and paved parking area as well as areas for outdoor recreation (boat dock, pool patio, raised patio along the north of the house). No documentation has been provided to justify these impacts or clarify why the existing driveway/parking areas or outdoor spaces are insufficient. Alternatives to these impacts include utilizing the existing, aforementioned spaces.
- Based on the above, staff has concluded that greater efforts can be made to reduce wetland impacts; therefore, the proposed site plan does not meet Section 15-362(5).

Section 15-396(3)(a), states, *"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. The protection, preservation and continuing viability of Class I conservation areas shall be the prime objective of the basis for review of all proposed alterations, modifications, or removal of these areas. When encroachment, alteration or removal of Class I conservation areas is permitted, habitat compensation or mitigation as a condition of development approval shall be required"*.

- Staff Analysis: Since authorization of the original homesite, the concrete parking area, and treehouse were not obtained through any environmental agency (neither EPD nor FDEP) and mitigation was never provided for the associated wetland impacts (total 0.484 acre of impacts), staff is requiring that mitigation be provided

for these features. Although the applicant has proposed some mitigation (purchasing credits), the amount of mitigation proposed only addresses the 0.04 acre paver driveway extension, 0.022 acre deck, and 0.026 acre covered patio.

- Staff Analysis: Although Chapter 15, Article X (adopted in 1987) does not specify a required buffer size, EPD would generally require a minimum 25-foot upland buffer or assess secondary impacts to the remaining wetland for the loss/reduction of the 25-foot upland buffer. The subject site has no buffers and the mitigation proposal does not address secondary impacts.
- Staff Analysis: Staff does not agree that the 0.04 acre paver driveway extension, 0.022 acre deck, 0.026 acre covered patio, and 0.022 acre concrete parking area are necessary for use of the site as a single family homesite, or that these impacts provide an "...overriding public benefit ...", or that these features are a reasonable use of the land.

Based on the above, staff has concluded that the proposed mitigation does not adequately offset all the impacts associated with the application, and that not all the proposed impacts are a reasonable use of the land or provide an overriding public benefit; therefore, the proposed application does not meet Section 15-396(3)(a).

EPD issued a Notice of Intent to Recommend Denial of the After-the-Fact CAI Application to the applicant on May 19, 2025. The letter stated that EPD was not in support of the application due to inconsistency with Sections 15-362(5) and 15-396(3)(a) and requested the applicant either confirm they would like to proceed to public hearing before the Board with a recommendation of denial, withdraw the After-the-Fact CAI Application and continue to work with staff to restore all areas of unauthorized wetland impacts, or revise the proposed site plan. On June 29, 2025, the applicant confirmed their intent to move forward with the public hearing with the current plans as proposed. Notification of the public hearing was sent to the applicant and authorized agent. Notification of the adjacent property owners is not required.

Staff Recommendation

EPD has made a finding that the request is inconsistent with Orange County Code, Chapter 15, Article X, Sections 15-362(5) and 15-396(3)(a) and recommends denial of After-the-Fact CAI Permit No. CAI-23-12-059. However, if the applicant were to revise the mitigation plan to include the 0.46-acre direct and secondary impacts associated with the original single-family homesite and pool/patio addition, EPD could recommend approval of those impacts, in addition to the 0.002 acre treehouse and 0.026 acre covered patio impacts.

Wetland Impacts and Recommendation Summary Table

Item	Acres	Constructed By	Mitigation Proposed (Y/N)	Staff Recommendation (current)	Staff Recommendation (if mitigation provided for No. 1)
1. Single-family homesite with pool/patio addition	0.46	Prior Owner	N	Deny	Approve
2. Concrete parking area	0.022	Prior Owner	N	Deny	Deny
3. Treehouse	0.002	Prior Owner	N/A (de minimis)	Deny	Approve
4. Covered patio	0.026	Applicant	Y	Deny	Approve
5. Deck	0.022	Applicant	Y	Deny	Deny
6. Paver driveway extension	0.04	Applicant	Y	Deny	Deny
Total	0.572				

Should the Board not accept staff's recommendation of denial and decide to approve the After-the-Fact CAI Application, or portions thereof, 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 the construction and continues in perpetuity.
3. The after-the-fact wetland impacts are authorized in accordance with the 'Wetland Impacts' plan, submitted by Bowman and Blair Ecology and Design, Inc., received by the Environmental Protection Division (EPD) on August 28, 2025.
4. The mitigation plan must be implemented in accordance with the 'Uniform Mitigation Assessment Method Summary', received by EPD on January 17, 2025. Since the impacts are after-the-fact, EPD must receive documentation demonstrating that mitigation has been completed (0.075 credits purchased) prior to permit issuance.
5. For any prior wetland impacts subject to the request, but not approved as part of the Board's action, the applicant shall submit and implement a restoration plan to the satisfaction of EPD.
6. 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.

7. 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.
8. 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, a 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 on the FDEP website: <http://dep.state.fl.us/water/stormwater/npdes/construction3.htm>.
9. 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, 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 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/reference.asp?No=Ref-04227>.
10. 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 62-621.300(2)(a) and 62-620 F.A.C. and Chapter 403, Florida Statutes (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:

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.

17. The permittee shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.
18. 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.
19. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
20. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. Pursuant to Section 125.022 FS, the applicant shall obtain all other applicable state or federal permits before commencement of development.

BUDGET: N/A