



Interoffice Memorandum

November 28, 2018

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

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

**CONTACT PERSON: David D. Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1405**

SUBJECT: December 18, 2018 – Public Hearing
Conservation Area Impact Permit for Fishbones-LLB, LLC
and Premium Shoppes FB, LLC, Little Lake Bryan Center
Project Site (CAI-17-10-029)

Fishbones-LLB, LLC and Premium Shoppes FB, LLC are requesting a Conservation Area Impact Permit (CAI) modification for 0.26 acre of direct impacts and 0.24 acre of secondary wetland impacts to Class I wetlands. The impacts are associated with parking associated with a proposed restaurant.

The project site is located on Vineland Avenue between Interstate 4 and Little Lake Bryan. The Parcel IDs for the site include 22-24-28-5109-00-012, 22-24-28-5109-00-014, 22-24-28-5109-00-015, and 22-24-28-5109-00-018. The subject property is located in District 1.

On December 2, 2008, the Board approved CAI #07-020, which authorized 0.06 acre of Class I wetland impacts in order to construct portions of a required fire access roadway behind a proposed restaurant. The approved mitigation plan required the purchase of 0.10 wetland mitigation credits from the Reedy Creek Mitigation Bank. Confirmation of the purchase of 0.10 mitigation credits from Reedy Creek was received by EPD on June 11, 2018.

Although the required mitigation was purchased, the wetland impacts were never completed. The original CAI is now expired. The applicant has reapplied and is requesting 0.26 acre of direct Class I wetland impacts and 0.24 acre of secondary impacts to Class I wetlands.

The proposed impacts to wetlands were assessed in accordance with the Uniform Mitigation Assessment Method (UMAM) under 62-345, Florida Administrative Code. To offset the direct and secondary impacts to Class I wetlands, the applicant has proposed to purchase 0.08 UMAM mitigation credits from the Shingle Creek Mitigation Bank, in addition to the 0.10 credits already purchased from Reedy Creek Mitigation Bank.

Pursuant to Orange County Code, Chapter 15, Article X, EPD staff has evaluated the permit application and required documentation. 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 applicant must also demonstrate that impacts to wetlands have been adequately avoided or minimized.

Based on the documentation and justifications provided by the applicant, the applicant has demonstrated to EPD and the Development Review Committee that the proposed site plan allows for reasonable use of the land and that there are no other feasible or practical alternatives available to further minimize the impacts to Class I wetlands and that the mitigation fully offsets the proposed impacts.

Notification of the public hearing was sent on November 15, 2018, to the applicants and authorized agent. Notification of the adjacent property owners is not required.

There is no current enforcement action on the subject property.

Staff Recommendation

Approval of the Conservation Area Impact Permit application 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 completion of construction and continues in perpetuity.
3. The wetland impacts must be completed in accordance with the "Site Layout Plan" prepared by Mitch Collins, P.E., Inc., received by the Environmental Protection Division (EPD) on October 16, 2018 and the "Proposed Jurisdictional Wetland Impacts Exhibit" prepared by Breedlove, Dennis & Associates, Inc., received by EPD on November 12, 2018. Construction shall be completed within five years from the date of issuance of this permit unless extended in writing. Requests for permit extension must be submitted to EPD prior to the expiration date.
4. Prior to initiating any construction within the wetlands to be impacted, EPD shall receive a Certificate of Credit purchase from the Shingle Creek Mitigation Bank stating that the transaction regarding the purchase of 0.08 mitigation credits has been completed.

5. In the event that the permittee does not successfully complete the transaction to purchase the requisite 0.08 mitigation credits from the Shingle Creek Mitigation Bank, the permittee shall obtain a permit modification from the Environmental Protection Officer (EPO) to provide alternative mitigation for the wetland impacts prior to the commencement of any construction activities in wetlands.

General Conditions:

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. Prior to any filling within the 100-year flood zone, a Flood Plain Permit authorizing the fill is required from the Orange County Stormwater Management Division.
8. 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 EPO. Notice of the revocation shall be provided to the permit holder promptly thereafter.
9. 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.
10. Construction plans shall be submitted to EPD for review and approval prior to initiating any construction activities. The construction plans shall include a site plan clearly depicting the location and acreage of the impacts.
11. 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.
12. 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.

13. 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 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.
14. The permittee is hereby advised that Section 253.77, Florida Statutes, 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 prior to commencing activity on sovereignty lands or other state-owned lands.
15. 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.
16. EPD shall have final mass grading plan approval to ensure that no modification has been made during the construction plan process.
17. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
18. EPD staff, with proper identification, shall have permission to enter the site at any reasonable time to inspect, sample, or test to ensure conformity with the plans and specifications approved by the permit.

19. 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.
20. 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.
21. 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.
22. 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 Generic Permit for Stormwater Discharge from Large and Small Construction Activities (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/contract 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>.
23. 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 NTU over background for Class III waters and their tributaries. 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>.

24. 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 Florida Statutes Chapter 403. 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.
25. Pursuant to Section 125.022, Florida Statutes, 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. Pursuant to Section 125.022 Florida Statutes, the applicant shall obtain all other applicable state or federal permits before commencement of the activity authorized herein.

ACTION REQUESTED: Approval of Conservation Area Impact Permit CAI-17-10-029 for Fishbones-LLB, LLC and Premium Shoppes FB LLC, Little Lake Bryan Center Project Site, subject to the conditions listed in the staff report. District 1

JVW/DDJ: mg

Attachments