



Interoffice Memorandum

April 28, 2023

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

FROM: Tim Boldig, Interim Director
Planning, Environmental, and Development
Services Department

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

SUBJECT: May 23, 2023 – Public Hearing
Shoreline Alteration/Dredge and Fill Permit Application for
Andrew Birr and Marlena Fox (SADF-22-03-010)
(Related to SADF-22-03-009 and SADF-22-03-011)

The applicants, Andrew Birr and Marlena Fox, are requesting a Shoreline Alteration Dredge and Fill (SADF) Permit to authorize the dredging of accumulated muck and silt from a canal connected to Howell Creek. The property is located at 1016 Howell Branch Road, Winter Park, FL 32789 (Parcel ID No. 32-21-30-5480-00-030) in District 5.

The applicants, together with two of their neighbors (Matthew and Annika Umbers at 1000 Howell Branch Road and James and Carol Hansen at 1008 Howell Branch Road), are requesting to dredge a 0.16 acre area within the man-made canal situated adjacent to their property to provide better accessibility to Howell Creek and Lake Maitland. Mr. and Ms. Umbers and Mr. and Ms. Hansen have concurrently submitted separate SADF permit applications, which are being brought to the Board for consideration on the same date. The accumulated muck and silt (approximately 900 cubic yards) will be removed through hydraulic dredging down to the canal's natural sediment bottom. The depth of the muck and silt ranges from two to three feet within the canal. The natural sediment bottom and banks of the canal will not be disturbed during dredging activities.

Prior to beginning the actual dredging, dead tree limbs and other debris will be removed from the canal bottom and hauled away. The hydraulic dredge pump will be situated on a small pontoon barge in the canal. The muck and organic sediments will be pumped through a four-inch tube into a Geotech tube located on the shoreline at 1000 Howell Branch Creek Road, which is currently vacant and owned by the Umbers. The Geotech tube will be twenty-two feet long and will be staged within a circular containment pit measuring 30 feet long by three feet deep. The Geotech tube will retain the dredge sediments while allowing the water to be released into the containment pit. The applicants expect the pump to run approximately eight hours per day and the entire dredging operation to last up to three weeks. Once the Geotech tube is full of material, it will be allowed to dry for several days and then hauled away to a landfill for disposal.

The soil removed from the containment pit during construction will be placed around the pit as a berm. Additional sediment and erosion control measures to be utilized include staked hay bales and double layer silt fencing around the pit as well as double silt fencing along the Normal High Water Elevation of the canal, and a floating turbidity barrier in the canal at the end of the dredging area.

The applicants have submitted a water quality monitoring plan which details how background water quality conditions as well as work area water quality conditions during the dredging activities will be monitored. Surface water samples and data will be collected once at least 30 days prior to conducting the dredge operation; once a week during dredging; and at least twice during the 60 days following completion of the dredge project, or until water quality parameters post-dredging meet pre-dredging conditions. During dredging activities, samples will be taken within the work area, outside the work area, and further downstream of the work area.

The water samples will be analyzed for several parameters, including but not limited to, water temperature, specific conductance, dissolved oxygen, turbidity, pH, total nitrogen, total phosphorus, and total suspended solids. Field activities will be conducted in accordance with the Florida Department of Environmental Protection (FDEP) Standard Operating Procedures listed in FT1000 (rev 1/2017) and laboratory analysis of the samples will be conducted by a NELAC certified laboratory. The applicants will submit a report of the monitoring results to the Environmental Protection Division (EPD) following the 30 days prior to the dredge sampling event, weekly during the dredge activities, and twice after the dredging events.

In accordance with Orange County Code, Chapter 15, Article VI, Section 15-218(d), notification of the public hearing was sent to property owners within 500 feet of the project site. EPD has received no objections to the request.

Pursuant to Orange County Code, Chapter 15, Article VI, EPD has evaluated the proposed SADF permit application and required documents and has made a finding that the request is consistent with Section 15-218.

Staff Recommendation

Approval of the SADF Permit, 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. Construction activities shall be completed in accordance with the engineered plans ('Site Plan' and 'Cross Sections') signed and sealed by Y.F. Steve Young, P.E. and

received by the EPD on February 1, 2023. 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 been completed within one year or extended, this permit shall be void and a new permit application with fee will be required.

4. In the event that the permitted activity has not been completed within one year, 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.
5. Dredged material shall be pumped, handled and disposed of in accordance with the dredging plan narrative and Best Management Practices (BMP) location map provided by Diane Arnn and received by EPD on March 22, 2023.
6. Water quality sampling shall be completed in accordance with the 'Water Quality Monitoring Program' provided by Bio-Tech Consulting, Inc., received by EPD on March 27, 2023. The sampling stations should be located per 'Figure 1' of the 'Water Quality Monitoring Program.'
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 elevation of the canal bottom 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. 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. 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).
10. Turbidity and erosion control measures shall remain in place until EPD has verified that the post-activity water quality monitoring results indicate the project area meets the baseline monitoring results.

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 or alteration of the natural canal banks is approved with this permit.

General Conditions:

13. 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.
14. 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.
15. 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.
16. 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.
17. 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 15, Article XV 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 permittee shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.

18. The permittees are 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 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.
19. 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.
20. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
21. 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.
22. 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.
23. 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.
24. 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.
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 permittees.
26. 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.
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 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.

28. Pursuant to Section 125.022 FS, the applicants shall obtain all other applicable state or federal permits before commencement of construction.

ACTION REQUESTED: Acceptance of the findings and recommendation of the Environmental Protection Division staff and approval of Shoreline Alteration/Dredge and Fill Permit SADF-22-03-010 for Andrew Birr and Marlena Fox, subject to the conditions listed in the staff report. District 5

DDJ/TB: jk

Attachments