



Interoffice Memorandum

December 12, 2019

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
(407) 836-1405**

SUBJECT: January 14, 2020 – Public Hearing
After-the-Fact Shoreline Alteration/Dredge and Fill Permit
Request for Linda McClung (SADF-19-11-018)

Linda McClung is requesting an after-the-fact Shoreline Alteration/Dredge and Fill (SADF) permit to authorize an existing seawall that was installed without permit by the current property owner approximately 16 years ago, as well as authorize the replacement of a six-foot section of the wall which is failing. The project site is located at 4716 Waterwitch Point Drive, Orlando in the northeastern portion of Lake Gatlin. The Parcel ID for the site is 13-23-29-2852-00-110. The subject property is located in District 3.

In accordance with Orange County Code, Chapter 33, Article II, Section 33-37(d), notification of the public hearing was sent to property owners within 500 feet of the project site. Pursuant to Orange County Code, Chapter 33, Article II, Environmental Protection Division (EPD) staff has evaluated the SADF permit application and required documents, and has made a finding that the request is consistent with Section 33-37.

Riprap and plantings will be installed waterward of the existing seawall. There are no existing seawalls on the adjacent properties, but there are other seawalls on the lake.

EPD has initiated an enforcement action with the property owner. On September 11, 2019, EPD staff observed aquatic vegetation being removed/water-jettted from the shoreline of the subject property. EPD staff spoke with one of the men performing the work who stated that the intention was to clear the face of the seawall so that repairs could be made. EPD subsequently sent a Notice of Violation (NOV) in relation to the vegetation removal to the property owner on September 23, 2019. The NOV informed the property owner that an SADF permit would be required prior to any repairs being made on the seawall. On November 17, 2019, EPD received an after-the-fact SADF permit application for the subject property, with the request to repair a six-foot section of the existing seawall. Approval of the after-the-fact permit request, along with installation of the required plantings and payment of an administrative penalty will bring the property into compliance with Orange County Code.

Pursuant to Orange County Code, Chapter 33, Article II, EPD staff has evaluated the SADF permit application and required documents and has made a finding that the request is consistent with Section 33-37(d).

Staff Recommendation

Approval of the after-the-fact Shoreline Alteration/Dredge and Fill Permit, subject to the following conditions:

Specific Conditions:

1. This permit shall become final and effective upon expiration of the 30 calendar day appeal period following the date of issuance, unless an appeal has been filed within this timeframe. Any appeal shall stay the effective date of this permit until all appeals are resolved.
2. Construction activities relating to the seawall repair shall be completed in accordance with the approved construction plans submitted by Streamline Permitting Inc., dated as received on November 18 and 20, 2019, by the Environmental Protection Division (EPD). The repair work must commence within six months and be completed within one year from the date of issuance of the permit. In the event that project has not commenced within six months or been completed within one year this permit is void.
3. Riprap and plantings shall be installed along the portion of the seawall fronting Lake Gatlin in accordance with the plans submitted by Streamline Permitting, Inc., received by EPD on November 18 and 20, 2019.
4. Riprap shall be installed at a 2 (horizontal): 1 (vertical) slope, and extend at least halfway up the face of the seawall.
5. Installation of plantings must be initiated within 30 days of installation of the riprap. After one year, if 80% coverage of native species is not established, additional replanting may be required.
6. This permit does not authorize any dredging or filling, except that which is necessary for the installation of the riprap and plantings.
7. The permittee may maintain a clear access corridor below the Normal High Water Elevation of 98.6 feet above mean sea level (NAVD88) for Lake Gatlin, not to exceed 30 feet in width, of sufficient length waterward from the shoreline, to allow access to open water. Any existing structures such as a boat dock must be located within this corridor.
8. Any permit extensions for the approved construction may be approved by way of Consent Agenda if there are no changes.
9. Native vegetation, including but not limited to fragrant water lily (*Nymphaea odorata*), bladderwort (*Utricularia* spp.), duck potato (*Sagittaria lancifolia*), pickerelweed (*Pontederia cordata*), and spatterdock (*Nuphar advena*) may not be removed from the shoreline outside of the access corridor.

General Conditions:

10. 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 the 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 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.
11. 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 approval. For further information, please contact the OCZD at (407) 836-5525.
12. After approval by the 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.
13. 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.
14. 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 of the seawall.
15. 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.
16. 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.
17. 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 33, Article II of the Orange County Code.

18. 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.
19. The permittee is 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 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.
20. Should any other regulatory agency require changes to the property or permitted activities, 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.
21. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
22. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
23. EPD staff shall have permission to enter the site at any reasonable time to inspect the property for conformity with the plans and specifications approved by the permit.
24. The permittee shall hold and save the County harmless from all damages, claims or liabilities, which may arise because 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 permittee.
26. 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.
27. Turbidity and sediments shall be controlled to prevent violations of water quality pursuant to Rules 62-302.500, 62-302.530(70) and 62-4.242, Florida Administrative Code. Best Management Practices, as specified in the Florida Stormwater, Erosion, and Sedimentation Control Inspector's Manual, shall be installed and maintained at all locations where the possibility of transferring suspended solids into wetlands and/or surface waters may occur due to the permitted activity. If site-specific conditions require additional measures, the permittee shall implement them as necessary to prevent adverse impacts to wetlands and/or surface waters.
28. 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 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.

29. Pursuant to Section 125.022, FS, the applicant shall obtain all other applicable state or federal permits before commencement of the activity authorized herein.

ACTION REQUESTED: Acceptance of the findings and recommendation of the Environmental Protection Division staff and approval of the After-the-Fact Shoreline Alteration/Dredge and Fill Permit SADF-19-11-018 for Linda McClung subject to the conditions listed in the staff report. District 3

JVW/DDJ: mg

Attachments