

**ENVIRONMENTAL PROTECTION DIVISION
PUBLIC HEARING REPORTS
OCTOBER 30, 2007**

**BISHOP AND BUTTREY, INC. PIT 104 AFTER-THE-FACT CONSERVATION AREA
IMPACT PERMIT APPLICATION -- DISTRICT 4**

The applicant, Bishop and Buttrey, Inc., is requesting an after-the-fact permit for Class I wetlands impacts associated with construction of portions of a borrow pit known as Pit 104. The project site is located at 11582 and 11762 Boggy Creek Road. The site is located south of the intersection of Boggy Creek Road and Tradeport Drive in Section 17, Township 24 South, Range 30, East. The subject property is located in Orange County Commission District 4.

00004



Interoffice Memorandum

October 22, 2007

TO: Mayor Richard T. Crotty
-AND-
Board of County Commissioners

FROM: Lori Cunniff, Manager
Environmental Protection Division

A handwritten signature in black ink, appearing to read "L. Cunniff", written over the printed name and title.

SUBJECT: BISHOP AND BUTTREY PIT 104 AFTER-THE-FACT CONSERVATION
AREA IMPACT PERMIT APPLICATION

Reason For Public Hearing

The applicant, Bishop and Buttrey, Inc., is requesting an after-the-fact Conservation Area Impact Permit for Class I wetlands impacts associated with the construction of portions of the borrow pit known as Pit 104.

Location of Property/Legal Description

The project site is located at 11582 and 11762 Boggy Creek Road. The site is located south of the intersection of Boggy Creek Road and Tradeport Drive in Section 17, Township 24 South, Range 30, East. The subject property is located in Orange County Commission District 4.

Public Hearing Notifications

Notification of the public hearing was sent certified mail to the applicant and agent on October 15, 2007. Notification of adjacent property owners is not required.

Staff Findings

Pursuant to Orange County Code, Chapter 15, Article X, Wetland Conservation Areas, Environmental Protection Division (EPD) staff has evaluated the application and reviewed the proposed mitigation plans, which are included as Attachment C.

The project site is 48.92 acres in size and contains 26.17 acres of Class I wetlands. The site also contains a borrow pit known as Pit 104. The applicant has already impacted a 0.99-acre portion of Class I wetlands in order to excavate portions of a borrow pit. As the second phase of the project, the applicant proposes to backfill most of the borrow pit with clean fill.

As mitigation for the loss of the forested wetlands associated with the excavation of the pit and for the loss of habitat associated with backfilling parts of the pit, the applicant proposes to hydrologically enhance the wetland and to place the remaining portions of the onsite wetland and an upland buffer into a conservation easement. The applicant will also be installing signage to identify the conservation easement area for the future occupants of the site.

Enforcement Action

There is pending enforcement action being taken by EPD on the subject property. An Administrative Penalty in the amount of \$7,524.00 has been paid. Issuance of this permit will complete the required corrective actions.

Staff Recommendation

Approval of this after-the fact Conservation Area Impact permit application, subject to the following conditions:

Specific Conditions:

1. Conservation areas must be clearly marked with signage that identifies the wetland and upland buffer as identified on shown on the Sears Surveying Company sheet, dated as received by the Environmental Protection Division (EPD) on January 26, 2007. The signs must be installed within 90 days of permit issuance.
2. This permit authorizes the after the fact impact to 0.99 acre of Class I wetlands. No other impacts to wetlands or surface waters are authorized under this permit.
3. This permit requires the recording of a conservation easement and/or platting. Within ninety days of permit issuance, the permittee shall record a conservation easement, which shall include restrictions on the real property pursuant to the requirements of attached "Conservation Easement Addendum".

CONSERVATION EASEMENT ADDENDUM

3a. Description of Conservation Easement Area

- (a) Within thirty days of issuance of this permit, the permit holder shall provide to the EPD for review and written approval a copy of the surveyor's sketch and legal description of the area to be encumbered by the conservation easement pursuant to the County-approved mitigation plan. The Orange County Surveyor must approve the sketch of description and legal description.
- (b) If impacts to an upland within a Riparian Habitat Protection Zone or to a wetland or surface water for which mitigation is required are authorized to occur in discrete phases, the areas to be preserved to offset such impacts may be placed under a conservation easement in phases, such that impacts are offset immediately prior to the commencement of work within the phase that the impacts are permitted occur. Such phasing of preservation shall only occur if it has been proposed in the mitigation plan and approved by the permit. A surveyor's sketch of description and legal description of the area to be placed under conservation easement immediately prior to commencement of each phase must be submitted in accordance with paragraph (a) above.
- (c) At least forty-five days prior to (1) dredging, filling, or clearing of any wetland or surface water for which mitigation is required, (2) clearing any upland within a Riparian habitat Protection Zone for which mitigation is required, (3) the sale of any lot or parcel, (4) the recording of the subdivision plat, or (5) use of the infrastructure for its intended use, whichever first occurs, the permit holder shall submit to the EPD a copy of the preliminary plat depicting the area to be encumbered by the conservation easement.

3b. Conservation Easement Document

- (a) Prior to commencing any work authorized under this permit, the permit holder shall record a conservation easement, which shall include restrictions on the real property pursuant to Florida Statutes 704.06 and in accordance with paragraph (b) immediately below.
- (b) Within thirty days of issuance of this permit, the permit holder shall provide to the EPD for review and written approval a copy of the proposed draft deed of conservation easement, sketch of description, and legal description. The deed of conservation easement must be in a form approved by the Orange County Attorney's Office and Real Estate Management Division. Pursuant to Florida Statutes section 704.06, the conservation easement shall prohibit all construction, including clearing, dredging, or filling, except that which this permit specifically authorize. The conservation easement must contain the provisions set forth in Florida Statutes section 704.06(1)(a) through (h). The conservation easement must contain provisions that grant the County the right to access and inspect the conservation easement area, and to enforce the terms and conditions of the conservation easement. Unless specifically prohibit by law, the conservation easement shall include a provision whereby the permit holder shall warrant title and agree to defend the same. The Grantor shall not amend the conservation easement without approval by the Board of County Commissioners.

3c. Additional Documents Required

- (a) The permit holder shall ensure that the conservation easement identifies and is executed by the correct grantor who must hold sufficient record title to the land encumbered by the conservation easement. Accordingly, when the permit holder submits the proposed draft conservation easement, the permit holder must contemporaneously submit current evidence of title to the EPD. The evidence of title must be reviewed and approved by the Orange County Real Estate Management Division.
- (b) If the grantor of the conservation easement is a partnership, the partnership shall provide to the EPD a partnership affidavit stating that the person executing the conservation easement has the legal authority to convey an interest in the partnership land.
- (c) If there exist any mortgages on the land, the permit holder shall also have each mortgagee execute a consent and joinder of mortgagee subordinating the mortgage to the conservation easement. The County Attorney's Office and the Real Estate Management Division shall review and approve the consent and joinder of the mortgagee. The consent and joinder of mortgagee shall be recorded simultaneously with the conservation easement in the public records of Orange County.
- (d) Within thirty days of recording, the permit holder shall provide the EPD with (1) the original recorded conservation easement, included all exhibits, showing the date of recording and the official records book and page number, (2) a copy of the recorded plat, if applicable, (3) a surveyor's sketch of description of the easement area plotted on the appropriate USGS topographic map, and (4) the original recorded consent and joinder(s) of mortgagee, if applicable.

3d. Demarcation of Conservation Easement Area

Prior to lot or parcel sales, all changes in direction of the easement area boundaries must be permanently marked by monument above ground on the project site. The EPD shall approve the location, form, and material of the monuments.

General Conditions:

4. 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 the EPD. The permittee binds itself and its successors to comply with the provisions and conditions of this permit. If the 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.
5. 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, permittee agrees to either obtain written consent or to remove the offending structure from the affected owner or to remove the interference or encroachment within sixty 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 termination.
6. This permit does not release the permittee from complying with all other Federal, State, and Local rules and regulations. If these permit conditions conflict with those of any other regulatory agency the permittee must comply with the most stringent conditions.
7. Should any other regulatory agency require changes to the permitted system, the permittee shall provide written notification to the EPD of the change prior to implementation so that a determination can be made whether a permit modification is required.
8. The permittee shall immediately notify the EPD in writing of any previously submitted information that is later discovered to be inaccurate.
9. The permittee shall notify the EPD in writing within thirty 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, during the permit period. The permittee transferring the permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to such sale
10. EPD staff, with proper identification, shall have permission to enter, inspect, sample and test the system to ensure conformity with the plans and specifications approved by the permit at any reasonable time.
11. 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.
12. All costs, including attorney's fees, incurred by the County in enforcing the terms and conditions of this permit may be required to be paid by the permittee.
13. 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.

14. Turbidity and sediments must be controlled to prevent violations of water quality pursuant to Rule 62-302.500, 62-302.530(70) and 62-4.242 Florida Administrative Code (FAC). Best Management Practices, as specified in the *Florida Stormwater, Erosion and Sedimentation Control Inspectors Manual*, shall be installed and maintained at all locations where the possibility of transferring suspended solids into wetlands and/or surface waters due to the permitted activity. If site-specific conditions require additional measures, then the permittee shall implement them as necessary to prevent adverse impacts to wetlands and/or surface waters.
15. The existing ambient water quality within Outstanding Florida Waters shall not be lowered as a result of the proposed activity, except as authorized by the Florida Department of Environmental Protection under 62-4.242(2) FAC.
16. All excess lumber, scrap wood, trash, garbage, etc shall be removed from the preservation areas and/or surface water(s) immediately.
17. Any un-permitted impacts to wetlands and/or littoral zone as a result of the permitted activity shall result in the permittee restoring the impact within thirty days of completion of the project and shall be done to the satisfaction of the EPD.
18. For one acre or more of disturbed land, a National Pollutant Discharge Elimination System Notice of Intent to use a Construction General Permit for stormwater discharges shall be completed and sent to the EPD and copied to the EPD National Pollutant Discharge Elimination System Administrator prior to start of construction.
19. This permit will expire one year from issuance date.

ACTION REQUESTED: APPROVAL OF THE PERMIT AS RECOMMENDED BY STAFF.

EPD/C:rb



Environmental Protection Division

For E.P.D. Staff Use Only

Application # _____ Date Received _____ Receipt No _____
Reviewer: _____ Date of Complete Application: _____
Additional Information Requested: _____ Date of Site Visit _____
Date of Issuance of Determination Letter: _____
REV 3/00

APPLICATION FOR CONSERVATION AREA IMPACTS
(In Accordance with Orange County Wetland Conservation Areas
Chapter 15, Article X, Orange County Code)

Date: _____

County Commission District: _____

Send or Deliver To: Orange County Environmental Protection Division
Leeds Commerce Center
800 Mercy Drive,
Orlando, FL 32808
(407) 836-1400, Fax (407) 836-1499

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ENVIRONMENTAL PROTECTION DIVISION

Enclose a check for the filing fee of \$524.00 payable to The Board of County Commissioners

PROPERTY OWNER
Name: BISHOP & BUTTNEY, INC.
Mailing Address: 6239 EDGEWATER DRIVE, SUITE D-1
City: ORLANDO State: FLORIDA Zip: 32810
Home Phone: () Work Phone (407) 296-0016

APPLICANT
(If the applicant is not the property owner of record, then the 'Agent Authorization' section must be completed)
Name: BISHOP & BUTTNEY, INC.
Mailing Address: 6239 EDGEWATER DRIVE, SUITE D-1
City: ORLANDO State: FLORIDA Zip: 32810 Phone (407) 296-0016

AGENT
Name: NEAL THOMAS - ENVIRONMENTAL SERVICES, INC.
Mailing Address: 836 EXECUTIVE LANE, SUITE 100
City: ROCKLEDGE State: FLORIDA Zip: 32955 Phone (521) 688-8206

LOCATION OF PROPERTY

Street Address: 11582 & 11762 LOGGAY CREEK ROAD

Section(s) 17 Township 24 SOUTH Range 30 EAST

Legal Description: _____

Total Project Area: 48.92 acres

Total Wetland Area: 26.17 acres

Proposed Wetland Impact 0.99 acres

Habitat loss through Conservation Area Impacts shall be compensated by:

Mitigation (provide Submittal Requirements 1 through 7); or

Monetary payment (provide Submittal Requirements 1 through 2, and compensation methodology as detailed in Chapter 15, Article X, Section 15-396(1) or (2), Orange County Code)

SUBMITTAL REQUIREMENTS: (Note: All submittals shall have the property/project boundaries delineated.)

Attached (PREVIOUSLY SUBMITTED)

- A copy of the Conservation Area Determination issued by Orange County Planning Department.
- A table that identifies Conservation Area(s) proposed for impact and acreage of each impact.
- A list of all plants and animals which are listed as endangered, threatened or species of concern (pursuant to Section 581.185, F.S., and Rules 39-27.003 and 39.27.004, FAC)
- An aerial photograph that depicts the location of the mitigation site. (Note: if preservation of undisturbed uplands is proposed, the existing wetland system to which the mitigation site is contiguous, must also be depicted.
- A design for and a description of the area proposed for creation or restoration which shall include its acreage, grading design, species to be planted, plant density, source of plants and soils, and hydrologic regime.
- A detailed description of the monitoring and maintenance program.
- An itemized cost estimate for implementing the mitigation activity and monitoring program.

I hereby certify, to the extent of my knowledge, that the above information provided is true and correct.

Vic McCall General Manager 10-31-06
Applicant Signature Date

AGENT AUTHORIZATION

I, Vic McCall General Manager of B&B, as the property owner of the property described above, hereby give my
Property Owner's Name

permission for NEAL THOMAS to act as my agent for the purpose of applying for Conservation
Agent's Name

Area Determination (Orange County Wetland Conservation Areas, Chapter 15, Article X, Orange County Code)

Vic McCall 10-31-06
Applicant's Signature Date