



Interoffice Memorandum

November 3, 2021

TO: Mayor Jerry L. Demings
-AND-
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) 836-1406**

SUBJECT: November 30, 2021 – Public Hearing
Lake Bumby Properties (aka Durham Place Apartments)
Conservation Area Impact Permit Application No. CAI-21-08-055

The applicant, Lake Bumby Properties (aka Durham Place Apartments), is requesting a Conservation Area Impact (CAI) permit to authorize direct impacts to 0.0004 acre (18 square feet) of Class I wetlands and 0.33 acre of Class III surface waters in order to construct an affordable housing, multi-family residential apartment complex. The project will also result in secondary impacts to 0.08 acre of Class I wetlands and 0.14 acre of Class III surface waters.

The project site is located at 5215 South Orange Blossom Trail, Orlando, FL 32839, near the intersection of South Orange Blossom Trail and Americana Boulevard. A portion of the site fronts South Orange Blossom Trail with additional frontage on Lake Jessamine Drive. The Parcel ID for the site is 15-23-29-0000-00-020. The project site previously contained two parcels, and included additional Parcel ID 14-23-29-0000-00-003. The parcels were merged into a single Parcel ID in April 2021. The subject property is located in District 3.

The immediate surrounding land uses include the Legacy at Lake Jessamine subdivision to the east, additional single-family residential to the south, a mobile home park and commercial development to the west, and multi-family residential development to the north.

The project site is 20.81 acres in size and contains 11.88 acres of uplands and 8.93 acres of conservation areas. The majority of the uplands on the site can be described as a forested community type comprised of a variety of hardwood tree species.

The conservation areas onsite are comprised of:

- A 6.79-acre portion of Lake Bumby, a Class I surface water (SW-1);
- A 1.58-acre portion of Class I wetlands associated with Lake Bumby (W-1A, B, C);
- A 0.26-acre Class III man-made ditch system (SW-2); and
- A 0.31-acre portion of a larger Class III man-made ditch system (SW-3) that extends offsite to Lake Jessamine. This ditch traverses the site in a northwest-southeast direction, essentially dividing the site into two upland portions.

In order to construct portions of the project, the applicant proposes:

- 0.0004 acre (18 SF) of direct impacts to W-1A in order to install pilings associated with the proposed pedestrian boardwalk;
- 0.08 acres of secondary impacts to W-1A in association with the proposed pedestrian boardwalk and construction of the project's entrance road;
- 0.25 acre of direct impact to SW-2 in order to construct portions of the project's entrance road off of S. Orange Blossom Trail;
- 0.0001 acre (4 SF) of direct impacts and 0.002 acre of secondary impacts to SW-2 in order to construct portions of the proposed pedestrian boardwalk;
- 0.08 acres of direct impact to SW-3 in association with the entrance road and stormwater outfall structure; and
- 0.14 acres of secondary impact to SW-3 in association with the project's entrance road and stormwater outfall structure.

Site plan alternatives to avoid or minimize direct and secondary impacts to conservation area impacts were discussed with the applicant:

- EPD staff asked if the entrance road could be shifted to the south, thereby avoiding the direct and secondary impacts to the wetlands associated with Lake Bumby and SW-2. The applicant's consultant responded that there is a required 15-foot buffer between the southern project boundary and the proposed entrance road right-of-way. Therefore, the road cannot be shifted to the south.
- EPD staff asked if there are any potential site plan changes that could avoid impacts to SW-3. The applicant's consultant responded that the impacts to SW-3 are primarily to gain access to the uplands in the northeast portion of the site. Impacts to this ditch are unavoidable.
- The applicant's consultant also stated that access to the site from Lake Jessamine Drive has been determined to be unfeasible due to resident input.

During review of the Conservation Area Determination (CAD-21-02-038) for the property, a bald eagle (*Haliaeetus leucocephalus*) nest was documented within the central portion of the property, to the north of the east-west canal system. The bald eagle, while not listed as threatened or endangered, is both state and federally protected. The applicant has submitted a Non-Purposeful Take Permit application to the U.S. Fish and Wildlife Service (USFWS). Upon issuance, the permit will authorize work to occur up to 10 feet from the bald eagle nest tree, with monitoring being conducted throughout the nesting season (October 1 – May 15, or until fledging) consistent with USFWS guidelines while work is being conducted within the nest's 660-foot protection zone. Both the nest tree, and the nest itself, are to remain undisturbed post-construction.

As mitigation for the project's direct and secondary wetland/surface water impacts, the applicant is proposing to purchase 0.15 state wetland mitigation credits from the TM-Econ Mitigation Bank, Phase 1-3, located in southeastern Orange County.

EPD staff has evaluated the proposed impacts and site plan based on the review criteria in Orange County Code, Chapter 15, Article X. Pursuant to Section 15-396(3)(a), 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. Pursuant to Section 15-396(c), habitat compensation shall be allowed for Class III conservation areas in all cases.

Additionally, pursuant to Section 15-362(5), 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.

Accordingly, based on the documentation and justifications provided, EPD staff has determined that the applicant has demonstrated the proposed site plan allows for reasonable use of the land, that there are no other feasible or practical alternatives available to further minimize or eliminate impacts to the Class I wetlands or Class III surface waters, and therefore the request meets the criteria for approval.

Notification of the public hearing was sent via electronic correspondence to the applicant and their agent. Notification of the adjacent property owners is not required.

There has been no enforcement action taken by EPD on the subject property.

EPD staff has made a finding that the request is consistent with Orange County Code, Chapter 15, Article X, Sections 15-362(5) and 15-396(3)(a) and (c) and recommends approval of CAI Permit No. CAI-21-08-055, subject to the conditions listed below.

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 wetland impacts must be completed in accordance with 'Sheet C-2' prepared by AVCON, Inc. Engineering and Planning, received by the Environmental Protection Division (EPD) on November 2, 2021; 'Sheet C-511' and 'Sheet C-300' received by EPD on October 27, 2021; and 'Sheet C-200', 'Sheet C-201', 'Sheet C-508' received by EPD on October 22, 2021. Construction shall be completed within five years from 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 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.
5. 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.

6. 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 Municipal Separate Storm Sewer System (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/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.
7. 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 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.
8. 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.

General Conditions:

9. 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.

10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. The permittee shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.
16. 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.
17. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
18. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.

19. 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. Pursuant to Section 125.022 FS, the applicant shall obtain all other applicable state or federal permits before commencement of development.

ACTION REQUESTED: Acceptance of the findings and recommendation of the Environmental Protection Division staff and approval of Conservation Area Impact Permit CAI-21-08-055 for Lake Bumby Properties (aka Durham Place Apartments), subject to the conditions listed in the staff report. District 3

JW/DDJ: jk

Attachments