



Interoffice Memorandum

August 11, 2022

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
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SUBJECT: September 13, 2022 – Public Hearing
Christmas Creek Ranch, LLC After-The-Fact Conservation Area
Impact Permit Application No. CAI-21-07-042
(Related to Borrow Pit Excavation Permit No. 21-E5-0014)

The applicant, Christmas Creek Ranch, LLC, is requesting an after-the-fact permit to authorize direct impacts to 0.37-acre of Class I wetlands. The impacts were completed to improve an existing field road, provide better access to the applicant's property and to provide a haul route for a borrow pit project (Pit #186) proposed under application No. 21-E5-0014, which will be operated by Bishop & Buttrey. In addition to the direct impacts, the project will also require 0.55 acre of secondary impacts to Class I wetlands.

The project site is located north of Wheeler Road in Christmas, Florida in District 5. The Parcel ID Numbers for the site are 16-22-33-0000-00-004 and 16-22-33-0000-00-023. The two parcels are owned by third parties: AETM Ranch, LLC and Cecil and Margaret Tucker Irrevocable Trust, respectively. The applicant is the grantee of an access easement over a portion of the two parcels for an access road. The access easement is a total of 60 feet in width, with 30 feet owned by each of the two landowners. According to historical aerials, a narrow field road has existed in the approximate area of the access easement since the 1970s. The applicant utilizes the easement as one of two access points to two properties to the north: Parcel ID Numbers 16-22-33-0000-00-001 and 16-22-33-0000-00-024.

During review of the borrow pit permit application, Environmental Protection Division (EPD) staff determined that portions of the onsite wetlands had been cleared and filled along the field road within the access easement sometime in 2019. Upon a permit file review, EPD staff confirmed that the wetland clearing and filling was done without the required Orange County permits. On March 16, 2020, EPD issued Notices of Violation (NOVs) (Incident Nos. 21-586977 and 21-586662) to the landowners of Parcels 16-22-33-0000-00-004 and 16-22-33-0000-00-023, respectively, for unauthorized impacts to conservation areas. Although the NOVs were issued to the landowners, the unauthorized work was completed by the applicant.

On August 8, 2022, an administrative penalty of \$1,500 for each of the two incidents was paid by the applicant.

On June 14, 2021, an after-the-fact Conservation Area Determination (CAD) was issued to the applicant for the access easement area. On July 13, 2021, an after-the-fact Conservation Area Impact (CAI) Permit Application was received for the road improvements. The application was incomplete, and accordingly, several Request for Additional Information letters were sent to the applicant. The final site plan was received on July 13, 2022. The CAI application was deemed complete on August 3, 2022.

The project area, comprised of the 60-foot access easement, is 3.81 acres in size and contains three wetland areas. All the wetlands are identified as Class I in the CAD as they are contiguous to Christmas Creek. Wetland 1 consists of a relatively open canopy of swamp tupelo (*Nyssa biflora*). The wetland groundcover is mainly comprised of scattered soft rush (*Juncus effusus*) with other limited native vegetation, as well as invasive Peruvian primrosewillow (*Ludwigia peruviana*). Approximately, 0.08-acre of unauthorized impacts occurred to Wetland 1 due to grading and widening the access road, and replacement of two existing 24-inch culverts.

The portion of Wetland 2 within the project area was historically open and maintained as a pasture. Aerial photos indicate that over the last 10-15 years, the pasture was not well maintained, and the area reverted to a forested wetland comprised of sweetgum (*Liquidambar styraciflua*) and scattered cabbage palm (*Sabal palmetto*). The access road was extended through Wetland 2 with direct impacts to 0.29 acre of wetlands. The site plans indicate the existing 12-inch culvert will be extended to match the widened access road in order to maintain hydrology in Wetland 2.

Wetland 1-1 is located at the northern extent of the access easement and was not impacted by the unauthorized activities. No impacts are proposed to Wetland 1-1. An upland buffer of 25-foot width will be preserved adjacent to W1-1.

The applicant provided an alternate sites analysis to compare the feasibility of the proposed haul route with the utilization of an existing driveway to the east, which is also owned by the applicant and provides access to the same parcels proposed for the borrow pit project. The driveway is unpaved and is located approximately 0.5 mile east of the proposed haul route. The driveway is the main access to the applicant's family compound and is 30 feet wide. The applicant cites safety, traffic and additional wetland impact issues as the main problems with the alternate route, estimating approximately one acre of Class I wetland impacts would be required. The applicant further states that the adjacent landowner would not likely grant another 30-foot access easement to expand the driveway as they have already provided access on the western portion of their property. The applicant cites safety issues with the alternate route, including personal vehicles traveling to and from the family compound navigating the same road as the haul trucks. In addition, the use of the private driveway would require that haul trucks travel along Wheeler Road past five existing single-family homes.

EPD staff has evaluated the proposed impacts and site plan in accordance with the applicable review criteria. Pursuant to Orange County Code, Chapter 15, Article X, 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. When encroachment, alteration or removal of Class I conservation areas is permitted, habitat compensation or mitigation as a condition of development approval shall be required. Additionally, 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.

The applicant has designed the site to avoid and minimize impacts to Class I wetlands to the greatest extent practicable within the constraints of the available space in the access easement. In addition to the roadway width necessary for haul trucks, the applicant will be required to install stormwater treatment swales, which also contribute to the impacts required for the project. Additionally, the impacts to Class I wetlands have been limited to the outer edges where prior disturbance related to agricultural activities have already occurred. Therefore, impacts to the overall environmental productivity of the Class I wetlands is anticipated to be minimal, and the applicant will offset any adverse impacts with appropriate mitigation.

To offset the 0.37-acre direct wetland impacts and the 0.55-acre secondary wetland impacts, the applicant has proposed to purchase 0.30 Uniform Mitigation Assessment Method mitigation bank credits from the TM-Econ Mitigation Bank, Phases 1-3. The mitigation is appropriate and sufficient to offset adverse impacts to wetlands that will occur as a result of the proposed project.

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

Staff Findings and Recommendation

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 recommends approval of the after-the-fact CAI Permit No. CAI-21-17-042, 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 remain in accordance with Figure 7, prepared by Bio-Tech Consulting, Inc. dated as received by Environmental Protection Division (EPD) on August 10, 2022, and in accordance with Sheet 1, prepared by Grove Scientific and Engineering, dated as received by EPD on July 13, 2022. Requests for permit extension must be submitted to EPD prior to the expiration date.

4. Mitigation for direct and secondary impacts to W-1 and W-2 comprises the purchase of 0.30 Uniform Mitigation Assessment Method mitigation credits from the TM-Econ Mitigation Bank, Phases 1-3.
5. In the event that the permittee does not successfully complete the transaction to obtain the requisite 0.30 credits from the TM-Econ Mitigation Bank Phases 1-3, the permittee shall obtain a permit modification from the Environmental Protection Officer to provide alternative mitigation for the wetland impacts.
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 MS4, a 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. 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>.
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(70), 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 or 0 NTU over background for those surface waters and tributaries designated as Outstanding Florida Waters (OFW). 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>.
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 62-621.300(2)(a) and 62-620 F.A.C. and Chapter 403, Florida Statutes (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.
9. The operational phase of this permit is effective upon the completion of the construction and continues in perpetuity.

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 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.
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 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. 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 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.
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. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
17. 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.
18. 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.
19. 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.
20. 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.
21. Pursuant to Section 125.022 FS, issuance of this development 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.
22. 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 the After-The-Fact Conservation Area Impact Permit CAI-21-07-042 for Christmas Creek Ranch, LLC, subject to the conditions listed in the staff report. District 5**

JW/DDJ: erj

Attachments