



Interoffice Memorandum

February 9, 2017

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development
Services Department

**CONTACT PERSON: Lori Cunniff, CEP, CHMM, Deputy Director
Community, Environmental and Development
Services Department
(407) 836-1405**

SUBJECT: February 21, 2017 – Public Hearing
Mattamy Orlando, LLC, Conservation Area Impact Permit
Application No. CAI-15-10-035

****This item was continued from the February 7, 2017 Public Hearing****

The applicant, Mattamy Orlando, LLC is requesting a Conservation Area Impact Permit to allow direct impact of 3.05 acres and secondary impact of 2.47 acres of Class I wetlands in order to construct portions of a mixed use development including single-family homes, multi-family homes, stormwater ponds, community boardwalk, and roads (including an access road through wetlands to an isolated upland island).

The project site is located on the south side of Reams Road in unincorporated Orange County, Florida, in Sections 34 and 35, Township 23 South, Range 27 East; and Section 02, Township 24, South, Range 27 East. The properties are within the Horizon West, Lakeside Village development. The Parcel IDs for the project are 34-23-27-0000-00-035, 35-23-27-0000-00-013, 35-23-27-0000-00-015, and 02-24-27-0000-00-005. The subject property is located in Orange County Commission District 1.

The property includes 30.9 acres of uplands and a 69.37 acre portion of a larger Class I wetland that extends offsite and contiguous to Lake Reams. The onsite portion of the wetland is a diverse mixture of forested and cypress wetlands and deep water marsh.

Notification of the public hearing was sent certified mail to the applicant and agent on January 5, 2017. Notification of adjacent property owners is not required.

The original site plan proposed 4.62 acres of Class I wetland impacts. These impacts were for a 300 foot fill road to an upland island; single family lots and a pond on the island; home lots and pond on the eastern smaller upland; and townhomes, pond and roads on the larger western upland. Upland buffers were provided for less than 5% of the perimeter of the wetland leaving minimal uplands for water quality or wildlife refuge and creating a secondary impact of 2.26 additional wetland acres. Included in the direct impacts were 20 lots that had some portion encroaching directly into the Class I wetlands of which 11 lots were more than 50% in wetlands. Of those lots encroaching greater than 50%, four of them were for single family lots, the remainder were townhomes.

Staff offered support for Class I wetland impacts associated with the proposed development of the two upland areas contiguous with Reams Road, but requested that the isolated upland island be eliminated from the development plan. This request was supported by statements and commitments in the Reams Road Small Area Study conducted as part of the Future Land Use Amendment process. That study supported the change of the land uses along Reams Road from Greenbelt to higher densities but recommended that upland islands isolated by wetlands retain their Greenbelt designation. The value of an imbedded upland to the wetland system and wildlife is significant enough for staff to support Class I impacts in achieving a more condensed development on the remaining upland areas. The imbedded upland is particularly valuable in this development plan since there will be no significant areas of upland buffer remaining post development.

This approach was rejected by the development team stating that the island was integral to the project. Staff suggested at minimum the road to the island should be bridged and all wetland impacts associated with the island should be eliminated.

Multiple subsequent meetings resulted in two revisions that reduced direct Class I wetland impacts by 33% from 4.62 acres to 3.05 acres. Secondary wetland impact increased slightly due to the continued lack of buffers to 2.47 acres. The reduction of 1.57 acres of direct impact includes approximately 1.16 acres from reducing ponds that were oversized to provide fill for the project; 0.35 acre reduction in home lots in the wetlands; and 0.07 acre of reduction in the width of the fill road resulting from use of retaining walls with culverts. Staff will coordinate with Public Works at the time of construction plans for this development to assure that either a 'con-span' type prefabricated bridge section or box culverts are utilized for the fill road to the island to provide adequate hydrologic flow, wildlife movement and ease in maintenance as a future County road right-of-way.

Orange County code states that 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. Based on the documentation and justifications provided by the applicant, the applicant has demonstrated that the proposed site plan allows for

reasonable use of the land and that there are no other feasible or practical alternatives available to further minimize the impacts to Class I wetlands.

As mitigation for the impacts, the applicant proposes to preserve and maintain the remaining 64.86 acres of wetlands through dedication of development rights to Orange County in a Conservation Easement and will purchase 0.25 mitigation credits from the Florida Mitigation Bank. The mitigation, as proposed, offsets the impacts and provides for the protection, preservation and continuing viability of Class I conservation areas.

There has been no enforcement action taken by the Environmental Protection Division (EPD) on the subject property.

Staff Recommendation

Approval of the Conservation Area Impact permit subject to the following conditions:

Specific Conditions

1. This permit shall become final and effective upon expiration of the thirty (30) calendar day period following the date of rendition of the Board of County Commissioners' 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 wetland impacts must be completed in accordance with 'Sheet C6.00' of PSP-15-10-300 plans prepared by Poulos & Bennett, dated as received by EPD on December 6, 2016. Construction shall be completed within five years from issuance of this permit unless extended in writing. Requests for permit extension must be submitted to the Environmental Protection Division (EPD) prior to the expiration date.
3. Prior to initiating any construction within the wetlands to be impacted, EPD shall receive a Certificate of Credit purchase from Florida Mitigation Bank stating that the transaction regarding the transfer of 0.25 mitigation credits has been completed.
4. In the event that the permittee does not successfully complete the transaction to obtain the requisite 0.25 credits from the Florida Mitigation Bank, the permittee shall obtain a permit modification from the Environmental Protection Officer (EPO) to provide alternative mitigation for the wetland impacts prior to the commencement of any construction activities.

5. The wetlands to be preserved must total at least 64.86 acres in size as depicted on 'Sheet C6.00' of PSP-15-10-300 plans prepared by Poulos & Bennett, dated as received by EPD on December 6, 2016.
6. Prior to initiating any construction within the wetlands to be impacted by this permit, a Conservation Easement for the Wetland Tracts W1-W3 which includes the secondary impact areas and Upland Buffer Tracts B1-B7 per 'Sheet C6.00' of PSP-15-10-300 plans prepared by Poulos & Bennett, dated as received by EPD on December 6, 2016, shall be recorded in the public records of Orange County. The conservation easement must also be noted on the corresponding plat. The conservation easement shall be dedicated to Orange County and shall include restrictions on the real property pursuant to the requirements set forth below:
 - a. The conservation easement shall include restrictions on the real property pursuant to Section 704.06, Florida Statutes. The conservation easement cannot be recorded unless and until the conservation easement is accepted and approved by the Orange County Board of County Commissioners.
 - b. Within thirty (30) days of issuance of this permit, the permit holder shall provide to 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. 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 surveyor's sketch and legal description, the permit holder shall contemporaneously submit current evidence of title of the proposed easement area to EPD. The evidence of title is subject to review and approval by the Orange County Real Estate Management Division.
 - c. The conservation easement shall be in a form approved by the Orange County Attorney's Office and the Orange County Real Estate Management Division and provided to the permittee. Pursuant to Section 704.06, Florida Statutes, the conservation easement shall prohibit all construction, including clearing, dredging, or filling, except that which this permit specifically authorize. The conservation easement shall contain

the provisions set forth in Florida Statutes section 704.06(1)(a) through (h). The conservation easement shall 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 prohibited 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 Orange County Board of County Commissioners.

- d. The installation of the proposed boardwalk identified on Sheet C6.00 of PSP-15-10-300 plans prepared by Poulos & Bennett, dated as received by EPD on December 6, 2016, is allowed to be identified in the conservation easement language as a retained right.
- e. If the grantor of the conservation easement is a partnership, the partnership shall provide to EPD a partnership affidavit stating that the person executing the conservation easement has the legal authority to convey an interest in the partnership land.
- f. 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 which shall be subject to review and approval of the County Attorney's Office and the Real Estate Management Division. The consent and joinder of mortgagee shall be recorded simultaneously with the conservation easement in the public records of Orange County at the permit holder's sole expense.
- g. Upon approval of the final executed documents by Orange County, the conservation easement shall be scheduled to be heard by the Orange County Board of County Commissioners. Upon approval by the Board of County Commissioners, the easement and its attachments shall be recorded in the public records of Orange County, at the permit holder's sole expense.
- h. 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 location, form, and material of the monuments shall be subject to the review and approval of EPD.

- i. 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 the River Corridor Protection Area or as required per Chapter 15, Article XI, Section 15-442(f); (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 EPD a copy of the preliminary plat depicting the area to be encumbered by the conservation easement.

If during the review of the submitted evidence of title, the Orange County Real Estate Management Division finds any encumbrances or irregularities that will render the proposed mitigation as not adequately offsetting the impact(s), the applicant shall submit a revised mitigation plan for staff review and approval. The approval may also require Orange County Board of County Commissioner's approval.

7. The final construction design for the road crossing to the upland island has not been completed. The area of the wetland crossing to the upland island shall include box culverts or 'con-span' type pre-fabricated bridge spans sufficient to accommodate wildlife movement; hydrologic flow; and ease of maintenance to the satisfaction of Orange County EPD and Public Works. Upon construction plan development EPD will coordinate with Public Works in review and approval of the design.
8. Conservation areas shall be clearly marked with signage that identifies the wetland and upland buffer. These signs shall be installed every fifty (50) feet on any open space and on every other individual lot line. The signage shall conform to the detail shown 'Sheet C5.00' of PSP-15-10-300 plans prepared by Poulos & Bennett, dated as received by EPD on December 6, 2016. The signs shall be located as shown on 'Sheet C4.00-C4.02' of PSP-15-10-300 plans prepared by Poulos & Bennett, dated as received by EPD on December 6, 2016. The signs shall be installed prior the Certificate of Completion.
9. Properties shall have an environmental berm and swale installed prior to the Certificate of Completion for any of the subject lots. The environmental berm and swale shall conform with Sheets 'C4.00-4.02' and Sheet 'C5.00' of PSP-15-10-300 plans prepared by Poulos & Bennett, dated as received by EPD on December 6, 2016. The berm and swale shall be maintained throughout construction.
10. Maintenance of the onsite wetlands is a requirement of mitigation plan and shall be implemented in accordance with the 'Monitoring and Maintenance Plan' submitted by Bio-Tech Consulting and dated as received by EPD on January 26,

2016. The baseline report is due within 60 days of issuance of this permit and annual reports are required for a minimum of five subsequent years.

11. The applicant shall provide written notification to property owners that no alteration or encroachment of the recorded/platted conservation areas shall occur unless approved by Orange County. These restrictions shall be recorded as covenants and restrictions on the subdivision plat and shall be part of the documents provided to purchasers of lots within the subdivision. A copy of the notification that is to be provided to purchasers shall be submitted to EPD at the time of platting.
12. Successful establishment of the wetland mitigation will have occurred when the mitigation area comprises less than 10 percent nuisance vegetation and less than 5 percent exotic vegetation, as listed in the Florida Exotic Pest Plant Council's 2015 List of Invasive Species Category I and II; and this percentage has been met at the end of a five year monitoring period to EPD's satisfaction. If the area does not meet the required criteria, additional maintenance and monitoring will be necessary or alternative mitigation will be necessary.
13. A baseline monitoring report that clearly shows site conditions prior to construction activities must be submitted to EPD prior to initiation of any mitigation activities. This report needs to include, at a minimum the following information (site location, field sampling design, sampling methodology, GPS location of fixed transects, photographic documentation, fish and wildlife observations, hydrology, results and discussion).
14. Each annual monitoring report must contain the following information: (site location, GPS location of fixed transects – a minimum of 5 transects) field sampling design, sampling methodology, photographic documentation, fish and wildlife observations, hydrology, results and discussion of how the property is or is not meeting success criteria). If at the end of the 5 year monitoring period, the mitigation area is not meeting the monitoring success criteria, the Permittee is required to provide a restoration plan or modified mitigation plan, and may be required to continue monitoring until success has been demonstrated.
15. One community board walk of less than 500 square feet is allowed for this development as depicted on Sheet C6.00 of PSP-15-10-300 plans prepared by Poulos & Bennett, dated as received by EPD on December 6, 2016. No additional permitting or mitigation will be necessary for impacts by the structure with the assurance that the structure will be built to the following standards:

- a. Elevated at minimum 5 feet above ground;
- b. No wider than 6 feet;
- c. Meander around all trees greater than 4" diameter at breast height;
- d. All sides protected by railings;
- e. Start in the uplands;
- f. No lighting;
- g. Provide an information sign regarding the surrounding conservation lands.
- h. No filling is allowed in the wetlands other than the pilings for the boardwalk.

Prior to start of construction for the boardwalk, a plan must be submitted to EPD for review against the above criteria and an as-built survey is required within thirty (30) days of completion.

- 16. Prior to any filling within the 100-year flood zone a Flood Plain Permit may be required from the Orange County Stormwater Management authorizing the fill.
- 17. The permittee shall notify EPD, in writing, within thirty (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.
- 18. 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 Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP) pursuant to the requirements of 62-621.300(4)(a) F.A.C. As the Operator of the 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/contract 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>.

19. All excess lumber, scrap wood, trash, garbage, etc., shall be removed from the preservation areas and/or surface water(s) immediately.

General Conditions:

20. 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 EPO. Notice of the revocation shall be provided to the permit holder promptly thereafter.
21. 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.
22. 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 impacts and preservation.
23. 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.
24. 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 or encroachment within sixty (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.

25. 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. Permittee shall immediately notify EPD of any conflict between the conditions of this Permit and any other permit or approval.
26. The permittee is hereby advised that Section 253.77, Florida Statutes, states that a person may not commence any excavation, construction, or other activity involving the use of sovereign 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.
27. 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.
28. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
29. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
30. EPD staff, with proper identification, shall have permission to enter the site at any reasonable time to either, at a minimum: inspect, sample, or test to ensure conformity with the plans and specifications approved by the permit.

31. 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.
32. 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.
33. 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.
34. 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 Florida Administrative Cod (FAC). 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>.
35. Pursuant to Section 125.022, Florida Statutes, 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 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.
36. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before initiation of the project.

ACTION REQUESTED: Approval of Conservation Area Impact Permit (CAI-15-10-035) for Mattamy Orlando, LLC, subject to the conditions of approval listed in the staff report. District 1

JW/LC: mg

Attachments