



Interoffice Memorandum

April 27, 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: May 9, 2017 – Public Hearing
After-the-Fact Shoreline Alteration/Dredge and Fill Permit
Modification for Nikki Marie Miglore (SADF-16-07-008)

The applicant, Nikki Marie Miglore, is requesting an After-the-Fact Shoreline Alteration/Dredge and Fill (SADF) Permit Modification to replace an existing seawall located at 58 Oakdale Street. The project site is located on the Fischer Canal, which discharges into the Wauseon-Down Canal, leading to Wauseon Bay. The Parcel ID for the site is 08-23-28-1948-01-170. The subject property is located in Orange County Commission District 1.

Notification of the public hearing was sent out to the property owners within 500 feet of the project site.

On October 16, 2016, the Board of County Commissioners (BCC) approved SADF Permit Application SADF-16-07-008 to expand an existing boat basin landward into the uplands, at the same width and depth as the existing basin. However, during a site inspection on January 20, 2017, EPD staff noticed that a portion of a seawall on the canal was being replaced without authorization. This portion of the seawall replacement was not included on the plans approved by the BCC.

A Notice of Violation (NOV) was issued on February 9, 2017. The NOV required that the property owner address the extensive water quality (turbidity) violations in the canal that were created by the construction, submit a SADF permit modification application, and pay \$800 to the Conservation Trust Fund (CTF) for the unauthorized seawall construction. The property owner was also required to pay an additional \$4,399 to the CTF for the water quality violations.

On February 14, 2017 EPD received an After-the-Fact SADF Permit Modification Application to replace a failing wooden seawall on the Fischer Canal with a new wooden seawall after-the-fact. No rip-rap or plantings are being requested due to navigational concerns in the canal. Pursuant to Orange County Code, Chapter 33, Article IV, EPD staff has evaluated the proposed Shoreline Alteration application and required documents.

Issuance of this SADF permit modification, as well as the payment of an \$800 penalty to the Conservation Trust Fund, will bring the property into compliance.

Staff Recommendation

Approval of the After-the-Fact Shoreline Alteration/Dredge and Fill Permit Modification, subject to the following conditions:

Specific Conditions:

1. This permit modification shall become final and effective upon expiration of the thirty (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 any and all appeals are resolved.
2. Construction activities shall be completed in accordance with the 'Construction Plan' submitted by Streamline Permitting, Inc., dated as received on February 14, 2017, by the Environmental Protection Division (EPD). The permitted work must be commenced within six months and completed within one year from the date of issuance of the permit. In the event that project has not commenced within six months or completed within a year this permit is void. The operational phase of this permit is effective upon the completion of the construction and continues in perpetuity.
3. Any permit extensions for the approved construction may be approved by way of Consent Agenda if there are no changes.
4. All dredged material shall be removed to an approved upland location.
5. A copy of this permit, along with EPD stamped and approved drawings should be taken to the Orange County (OC) Zoning Division at 201 South Rosalind Avenue for approval in order to obtain a building permit. For further information, please contact the OC Zoning Division at (407) 836-5525.
6. After approved by OC Zoning, the certified site plans will need to be reviewed by the OC Building Division in order to obtain a building permit. For further information, please contact the OC Division of Building Safety at (407) 836-5550.
7. 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.

8. No filling can be performed except in the actual construction of the seawall.
9. The permittee is required to maintain the turbidity and sedimentation barriers until EPD has approved, in writing, the post activity that indicates the project area meets Class III surface water quality criteria as listed in F.A.C. 62-302.

General Conditions:

10. 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.
11. 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 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.
12. 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 VI 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.

13. 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.
14. 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.
15. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
16. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate. EPD may revoke the permit upon discovery of information that was provided in the permit application that is later discovered to be inaccurate, or if the project may cause pollution to water bodies, cause an adverse impact to navigation, cause an adverse impact on the riparian rights of other waterfront property owners, or impede the use and enjoyment of the waterbody by the public.
17. 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.
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. 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. Turbidity and sediments shall 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 Inspector's 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.

22. Pursuant to Section 125.022, Florida Statutes, 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.

23. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.

ACTION REQUESTED: Approval of After-the-Fact Shoreline Alteration/Dredge and Fill Permit Modification for Nikki Marie Miglore (SADF-16-07-008), subject to the conditions listed in the staff report. District 1

JVW/LC: mg

Attachment