



Interoffice Memorandum

April 5, 2018

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

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

**CONTACT PERSON: David D. Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1405**

SUBJECT: April 10, 2018 – Public Hearing
Mr. Gary T. Randall (Moss Park North Parcel A Project Site)
Conservation Area Impact Permit Application No. CAI-17-03-008

Gary T. Randall is requesting a Conservation Area Impact (CAI) Permit for direct impacts to 1.37 acres of Class I wetlands and 0.16 acre of Class III wetlands in order to construct multi-family buildings, portions of the entrance road and a stormwater pond. The project will also result in 0.82 acre of secondary Class I wetland impacts. This CAI is being considered concurrently with the Moss Park North Planned Development / Moss Park Preserve Preliminary Subdivision Plan / Development Plan Case # PSP-17-06-181.

The project is located at 11001 Moss Park Road, just east of the intersection of State Road 417 and Moss Park Road, in unincorporated Orange County. The parcel identification numbers for the project are 09-24-31-0000-00-003 and 09-24-31-0000-00-011. The subject property is located within the Innovation Way Study Area and is subject to the requirements of the Environmental Land Stewardship Program (ELSP) Ordinance. The project is located in Orange County Commission District 4.

Notification of the public hearing was sent via electronic correspondence on March 13, 2018 to the applicant's agent and engineer. Notification of adjacent owners is not required.

Staff has evaluated the project in accordance with Orange County Code, Chapter 15, Article X (Wetland Conservation Ordinance) and Article XVIII (Environmental Land Stewardship Program (ELSP) Ordinance). The project site is comprised of 59.19 acres of uplands, 48.43 acres of Class I wetlands, and 0.16 acre of Class III wetlands. The uplands on the site are pine flatwoods and improved pasture. The Class I wetland is part of a larger mixed forested system that extends offsite. The Class III wetlands are wet prairie.

The applicant proposes to impact a 1.37-acre portion of the onsite Class I wetlands and all of the Class III wetlands (0.16 acre) on-site.

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 Environmental Protection Division (EPD) and the Development Review Committee have confirmed 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 impacts to Class I or Class III wetlands.

As mitigation for the impacts, the applicant proposes to preserve 34.3 acres of on-site Class I wetlands. Additionally, the applicant will restore 0.03 acre of historic wetland impacts associated with a cattle crossing, and preserve 1.85 acres of upland buffers not utilized as mitigation. The mitigation, as proposed, fully offsets the impacts. Finally, the mitigation plan provides for the protection, preservation and continuing viability of Class I conservation areas.

There has been no enforcement action taken by 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 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 wetland impacts must be completed in accordance with 'Exhibit C2' and the 'Box Culvert Section' of the plans prepared by Poulos & Bennett, received by EPD on February 12, 2018 and January 19, 2018, respectively. 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.
3. The mitigation plan must be implemented in accordance with 'Exhibit C2' of the plans prepared by Poulos & Bennett, received by EPD on February 12, 2018. The preservation area must total at least 34.3 acres in size.
4. This Conservation Area Impact (CAI) permit is not valid until such time as the corresponding Preliminary Subdivision Plan (PSP), or portions thereof, has been approved by the Board.
5. The permittee shall comply with the requirements of Chapter 15, Article XVIII ELSP Ordinance.

6. Prior to approval and execution of any plat, and consistent with the Environmental Land Stewardship (ELS) Agreement and final Environmental Lands Stewardship Area Determination (ELSAD), the requisite stewardship lands shall be preserved by either:
 - a. Conveyance to the County in fee simple by warranty deed (to include a one-time monetary contribution towards land management (as determined by EPD));
 - b. Conveyance to an environmental organization to be approved by the County in fee-simple by warranty deed; or
 - c. Recording of a conservation easement in favor of the County or environmental organization approved by the County.
7. The conservation easement shall be in favor of, and dedicated to Orange County and cannot be recorded unless and until the easement is accepted and approved by the Board. The conservation easement 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 Board.
 - b. Within thirty 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. If impacts to an upland defined as River Corridor Protection Zone (Chapter 15, Section 15-443(1), or upland buffer as defined in Chapter 15, Article XI, Section 15-442(f), 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 to 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 shall be submitted in accordance with paragraph (b) above.

- d. 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 authorizes. 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 Board.
- 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 any mortgages exist 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 Orange County Attorney's Office and the Orange County 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 Board. Upon approval by the Board, 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) the sale of any lot or parcel; (3) the recording of the subdivision plat; or (4) 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.

- j. 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. Board approval may also be required.
- 8. Conservation areas shall be clearly marked with signage that identifies the wetland and upland buffers. These signs shall be installed every 150 feet on any open space and on every other individual lot line. The signage shall conform to the detail and be located as shown on Exhibit C2 of the plans prepared by Poulos & Bennett, received by EPD on February 12, 2018. The signs shall be installed prior to plat approval.
 - 9. Prior to approval and execution of any plat including stewardship lands, a management plan for the stewardship lands shall be in place. The management plan shall promote the preservation of wildlife and maintenance of native species diversity. The management plan must meet the minimum requirements as outlined in 15-827(a)-(h).

Cattle Crossing Restoration Conditions:

- 10. The restoration of the cattle crossing, including monitoring and maintenance shall be conducted in accordance with the 'Restoration Plan' prepared by Bio-Tech Consulting, Inc., received by EPD on February 12, 2018.
- 11. A time-zero monitoring report shall be submitted within 30 days of completion of restoration of the cattle crossing. The report must 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.
- 12. The permittee is required to conduct semi-annual monitoring and submit annual monitoring reports for a period of five years for the restored cattle crossing. The reports must include, at a minimum, the following information: site location, GPS location of fixed transect, field sampling design, sampling methodology, photographic documentation, fish and wildlife observations, hydrology, results and discussion.
- 13. Successful establishment of the restored cattle crossing will have occurred when:
 - a. At least 80 percent of the planted individuals within each stratum have survived throughout the monitoring period and show signs of normal growth based upon standard growth parameters, such as height and base diameter, or canopy circumference; and
 - b. At least 80 percent areal coverage by appropriate and desirable wetland shrub and groundcover species has been obtained; and

- c. Invasive exotic vegetative species, as listed in the Florida Exotic Pest Plant Council's 2017 List of Invasive Species Category I and II, comprise less than five percent areal coverage; and
 - d. The above criteria have been met at the end of a five-year monitoring period to the satisfaction of EPD.
14. If at the end of the five-year monitoring period, the restoration area is not meeting success criteria, the permittee may be required to conduct a supplemental planting and be required to continue monitoring until success has been demonstrated.

On-Site Preservation Area Conditions:

15. The preservation areas utilized as mitigation shall be monitored and maintained in accordance with the Monitoring Plan prepared by Bio-Tech Consulting, Inc, as received by EPD on February 12, 2018.
16. A baseline monitoring report that clearly describes site conditions in the preservation areas must be submitted to EPD prior to initiation of construction. The report must 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.
17. The permittee is required to conduct semi-annual monitoring and submit annual monitoring reports for a period of ten years. The reports must include, at a minimum, the following information; site location, GPS location of fixed transect, field sampling design, sampling methodology, photographic documentation, fish and wildlife observations, hydrology, results and discussion.
18. Successful establishment of the wetland mitigation areas will have occurred when:
- a. At least 85 percent areal coverage by appropriate and desirable wetland species has been obtained; and
 - b. Hydrologic conditions generally conform to typical hydrology for the wetland system type; and
 - c. Invasive exotic vegetative species, as listed in the Florida Exotic Pest Plant Council's 2017 List of Invasive Species Category I and II, comprise less than five percent areal coverage; and
 - d. The above criteria have been met at the end of a ten-year monitoring period to the satisfaction of EPD.

19. If at the end of the ten-year monitoring period, the mitigation area is not meeting success criteria, the permittee is required to provide a restoration plan or modified mitigation plan, and shall be required to continue monitoring until success has been demonstrated.

General Conditions:

20. The operational phase of this permit is effective upon the completion of the construction phase and continues in perpetuity.
21. 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.
22. All excess lumber, scrap wood, trash, garbage, and similar materials shall be immediately removed from any preservation areas.
23. 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.
24. 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 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 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), 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>.

25. 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. 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>.
26. Discharge of groundwater from dewatering operations requires approval from FDEP and the applicable Water Management District. The operator/contractor shall obtain a 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 Florida Statutes Chapter 403. 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.
27. The applicant shall provide written notification to property owners that no alteration or encroachment of the 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.
28. Properties shall have an environmental berm and swale installed prior to the certificate of completion for any of the subject lots. The berm and swale shall be maintained throughout construction.
29. 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.

30. Prior to construction, the permittee shall clearly designate the limits of construction onsite. The permittee shall advise the contractor that any work outside the limits of construction, including clearing, may be a violation of this permit.
31. 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.
32. 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 herein. The complete permit shall be available upon request by Orange County staff.
33. 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 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.
34. 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.
35. 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.

36. 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.
37. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
38. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
39. EPD staff shall have permission to enter the site at any reasonable time to inspect, sample, or test to ensure conformity with the plans and specifications approved by the permit.
40. 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.
41. 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.
42. 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.
43. 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. Pursuant to Section 125.022 Florida Statutes, the applicant shall obtain all other applicable state or federal permits before commencement of development.

ACTION REQUESTED:

**Approval of Conservation Area Impact Permit
Application No. CAI-17-03-008 for Gary T. Randall
(Moss Park North Parcel A), subject to the conditions
listed in the staff report. District 4**

JVW/DJ:mg

Attachments

