



Interoffice Memorandum

May 18, 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: May 22, 2018 – Public Hearing
Venetian Isles at Horizon West, LLC Pool/Amenity Center
Conservation Area Impact Permit Application No. CAI-17-03-009

Venetian Isles at Horizon West is requesting a Conservation Area Impact (CAI) Permit in order to construct portions of a pool and amenity center associated with student housing. This CAI is being considered concurrently with the North of Alberts PD/Westside Preliminary Subdivision Plan (PSP) Case # CDR-17-11-346.

The project is located at Village Lake Road, immediately adjacent to Winter Garden Vineland Road, just west of Lake Burden and north of Lake Spar, in unincorporated Orange County. The parcel identification numbers for the project are 25-23-27-5839-03-000, 25-23-27-5839-00-001 and 25-23-27-5839-00-006. The project is located in District 1.

Notification of this public hearing was sent via electronic correspondence on May 4, 2018, to the applicant and agent. Notification of adjacent owners is not required.

On January 19, 2016, staff issued CAI-15-05-014 which authorized 0.014-acre of Class I impacts for a pond outfall pipe, 0.218-acre of Class II impacts, 1.344 acres of Class III impacts, and 0.011-acre of temporary upland buffer impacts. Mitigation included onsite preservation of the remaining 11.88 acres of Class I wetlands (Wetland 1, 4 and 5) and 2.37 acres of onsite uplands, plus the purchase of 0.15 federal, freshwater forested wetland credits from the Florida Mitigation Bank. The authorized impacts and required mitigation plan were completed in accordance with that permit.

The site was later split into multiple parcels for various projects. The project site being considered under this permit application includes a portion of Wetland 1. Wetland 1 consists of a 5.18-acre portion of a Class I surface water system that extends offsite. The

surface water is an unnamed lake less than 10 acres in size with a vegetated littoral shelf. The vegetated littoral shelf is a mixture of native and nuisance/exotic species. The surface water discharges east via a large box culvert to Lake Burden and then south to Lake Spar.

In order to construct portions of the pool and associated amenities, the applicant proposes to impact a 0.12-acre portion of W1.

Staff has evaluated the project in accordance with Orange County Code, Chapter 15, Article X (Wetland Conservation Ordinance).

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 (DRC) 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 the Class I surface water.

As mitigation for the impacts, the applicant proposes to preserve 1.51 acres of Class I wetlands (off-site) associated with the Latham Park Mitigation Area. The mitigation, as proposed, fully offsets the impacts. The mitigation plan provides for the protection, preservation and continuing viability of Class I conservation areas.

Finally, in accordance with the requirements of CAI-15-05-014, a Conservation Easement (CE) was dedicated to Orange County on May 24, 2016. Since the current permit application contemplates impacts over a portion of the recorded CE, a partial release of the CE has been requested and is being reviewed by the Orange County Real Estate Management Division and the Orange County Attorney's Office.

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 fifteen (15) 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. The operational phase of this permit is effective upon the completion of the construction phase and continues in perpetuity.
2. The wetland impacts may not be completed until the partial release to the Conservation Easement is approved by the BCC and must be completed in accordance with Figure 6 – Wetland Impacts prepared by Bio-Tech Consulting, Inc.,

received by the Environmental Protection Division (EPD) on February 29, 2017. Construction shall be completed within five (5) years from the date of 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 Latham Park Mitigation Package, prepared by Bio-Tech Consulting, Inc., received by EPD on October 30, 2017. The total amount of preservation must be at least 1.51 acres in size. A letter documenting the completion of the purchase of the mitigation from the Latham Park Mitigation Area must be submitted to EPD prior to approval of construction or mass grading plans.
4. Latham Park Mitigation Area: In August 2013, 226.893 acres of wetlands of Parcel ID # 03-24-27-0000-00-003 were placed under a Conservation Easement for use as mitigation for future projects. In addition, 2.166 acres of upland buffers and 0.485 acre of surface waters (ditches) were placed under the easement, but not designated for use as mitigation. In August 2013 the Latham Park North project (CAI-12-10-022) encumbered 21.51 acres leaving 205.38 acres remaining for future use. In December 2013 the Latham Park South project (CAI-13-01-000) encumbered another 41.68 acres leaving 163.70 acres for future mitigation projects. In January 2014 the Hartog Project encumbered another 7.38 acres, leaving 156.32 acres for future projects. In February 2014 the Ivey Groves project encumbered another 30.38 acres, leaving 125.94 acres for future projects. In April 2014 the Lakevue Shores and Seidel East projects encumbered another 6.23 acres and 5.49 acres, respectively, leaving 114.22 acres for future projects. In May 2014, the Village Center at Summerport project encumbered another 6.62 acres, leaving 107.60 acres for future projects. In June 2014 the Hamlin Master Ponds project encumbered another 13.21 acres, leaving 94.39 acres for future projects. In August 2014 the Hamlin North, Seidel Road Design Segments 1 and 2, and Bella Isles projects encumbered another 1.00, 51.89, and 0.18 acres, respectively, leaving 41.32 acres for future projects. In December 2014 the Springhill Offsite Utilities project encumbered another 1.51 acres, leaving 39.81 acres for future projects. In February 2015 the Vineyards Townhomes project encumbered another 3.21 acres, leaving 36.60 acres for future projects. In August of 2015 Ivey Groves (aka Royal Cypress Preserve) Modification added 30.38 acres, increasing the number of available acres for future projects to 66.98. Also in August of 2015 the Isles of Lake Hancock Semi-Private Boat Ramp encumbered 2.32 acres, leaving 64.66 acres for future use. In December of 2015 Watermark 3 and 4 Phase I encumbered 0.94-acre, leaving 63.72 acres for future projects. In April of 2016 Watermark 3 and 4 Phase II encumbered 0.18-acre, leaving 63.54 acres for future use. In April of 2018 the Hickory Nut Estates project encumbered 8.87 acres, leaving 54.67 acres for future projects. The Venetian Isles at Horizon West, LLC project proposes to encumber 1.51 acres, leaving 53.16 acres for future use.
5. 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 and location shown on sheet PSP4.2, received by DRC on January 8, 2018. The signs shall be installed prior to EPD approval of the plat.

6. Prior to initiating any construction within the wetlands, surface waters or upland buffers that require mitigation, this permit requires the partial release of the on-site Conservation Easement, as recorded with CAI-15-05-014.
7. The mitigation enhancement and monitoring shall be conducted in accordance with the narrative prepared by Bio-Tech Consulting, Inc., received by EPD on December 9, 2015, which is associated with CAI-15-05-014.
8. Restoration for the temporary direct and secondary wetland impacts must be implemented in accordance with Figure 6b – 'Wetland Impacts Map' received by EPD on February 29, 2017; as well as sheet EX-1 received by EPD on September 28, 2017.
9. A baseline monitoring report for each mitigation area that clearly describes pre-existing site conditions must be submitted to EPD prior to initiation of any of the enhancement activities. 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.
10. A time-zero monitoring report for each site shall be submitted within thirty (30) days of completion of the enhancement/creation activity(s). The time-zero report shall include the same monitoring parameters as the baseline report.
11. The permittee is required to annually submit a monitoring report for any areas on-site utilized as mitigation. Monitoring reports shall contain 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.
12. Successful establishment of the wetland mitigation area(s) will have occurred when:
 - a. At least ninety (90) 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 eighty-five (85) percent areal coverage by appropriate and desirable wetland species has been obtained; and
 - c. Hydrologic conditions generally conform to typical hydrology for the wetland system type; and
 - d. Invasive exotic vegetative species, as listed in the Florida Exotic Pest Plant Council's most recent List of Invasive Species Category I and II, comprise less than five (5) percent areal coverage; and
 - e. The above criteria have been met at the end of a five (5) year monitoring period to the satisfaction of EPD.

13. If at the end of the five (5) year monitoring period, if the mitigation areas are 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.

General Conditions

14. The applicant shall provide written notification to property owner(s) that no alteration or encroachment of the platted conservation areas shall occur unless approved by Orange County. These restrictions shall be recorded on the plat
15. 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.
16. 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.
17. For projects which disturb one (1) acre or more of land, or which are less than one (1) acre but are part of a larger common plan of development that is greater than one (1) 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 (aka CGP) pursuant to the requirements of 62-621.300(4)(a) F.A.C.
18. As the Operator of the Municipal Separate Storm Sewer (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>.
19. The CGP requires temporary stabilization if areas are inactive for seven (7) days or more and permanent stabilization within 7 days of achieving final grade.

20. 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 Code (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 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>.
21. 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 FAC 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.
22. All excess lumber, scrap wood, trash, garbage and similar materials shall be immediately removed from any wetlands or surface water(s) not authorized for impact.
23. 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.
24. 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.
25. 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.

26. 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.
27. 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 an 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 (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.
28. 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.
29. 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.
30. 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.
31. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.

32. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
33. EPD staff shall have permission to enter the site at any reasonable time to inspect the project site for conformity with the plans and specifications approved by the permit.
34. 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.
35. 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.
36. 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.
37. 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. 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-17-03-009 for Venetian Isles at Horizon West, LLC Pool/Amenity Center, subject to the conditions listed in the staff report. District 1

JVW/DJ:mg

Attachments