



Interoffice Memorandum

May 3, 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
National Spa and Resort Project Site, Conservation Area Impact
Permit Application No. CAI-17-02-003

DCS Real Estate Investments IV, LLC is requesting a Conservation Area Impact (CAI) Permit in order to construct portions of a hotel with associated amenities and parking, a self-storage facility, multi-family residential buildings, fencing, and compensating storage outfall swales. This CAI is being considered concurrently with the National Spa and Resort Preliminary Subdivision Plan / Development Plan Case # PSP-16-09-305.

The project is located at 9200 Turkey Lake Road, Orlando, Florida 32819, in unincorporated Orange County. The site is situated on both Boo Boo Lake (aka Mirror Lake) and Big Sand Lake. The parcel identification numbers for the project are 02-24-28-0000-00-005, 02-24-28-0000-00-030 and 02-24-28-0000-00-031. The project is located in District 1.

Notification of the public hearing was sent via electronic correspondence on April 19, 2018, to the applicant's agent and engineer. Notification of adjacent owners is not required.

The project site is comprised of 37.95 acres of uplands and two surface waters:

- A 16.27-acre portion of Boo Boo Lake. The remaining portion (approximately 1 acre) extends offsite to the south. The vegetation along the edge of Boo Boo Lake is comprised primarily of nuisance and invasive exotic species.
- A 7.28-acre portion of Big Sand Lake located along the western portion of the property. This includes the vegetated littoral zone of the lake and open water. The littoral zone is vegetated with nuisance and invasive exotic vegetation.

The applicant proposes the following Class I impacts:

- 6.13 acres of Boo Boo Lake: 1.56 acres will be filled in order to construct portions of the site and 4.57 acres will be dredged in order to create compensating storage and as a source of fill material for the project site. Finally, 3.21 acres of uplands adjacent to Boo Boo Lake will be excavated for additional compensating storage, which will expand the overall size of the lake by 1.65 acres.
- 0.13 acre of Big Sand Lake's wetland fringe will be modified by creating 3 swales in order to maintain a positive outfall from the compensating storage area to the lake.

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 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 wetlands or surface waters.

The applicant proposes the following as mitigation for the impacts:

- Purchase 1.43 freshwater mitigation credits from the Shingle Creek Mitigation Bank.
- Enhance 0.61 acre of the reconfigured shoreline of Boo Boo Lake by removal of all nuisance/exotic (N/E) vegetation that may remain after final grading, and installation of 2,960 native, herbaceous wetland plants and 66 cypress trees.
- Enhance 1.41 acres of uplands along the reconfigured shoreline of Boo Boo Lake by removal of all N/E vegetation that may remain after final grading, and installation of 6,825 sand cordgrass specimens.
- Enhance 3.00 acres of wetlands adjacent to Big Sand Lake by removal of all N/E vegetation and installation of 8,600 native, herbaceous wetland plants.
- Enhance 0.71 acres of uplands adjacent to Big Sand Lake by removing all herbaceous vegetation, and installation of 3600 native sand cordgrass. Native shrubs and trees will remain.

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. This Conservation Area Impact (CAI) permit is not valid until such time as the corresponding Preliminary Subdivision Plan (PSP) has been approved by the Board.
3. The wetland impacts must be completed in accordance with 'Sheet MP-01' and 'Sheet Nos. PSP-2, PSP-3, PSP-4, and PSP-5' of the plans prepared by Kimley Horn, received by the Environmental Protection Division (EPD) on February 20, 2018, and by the Development Review Committee (DRC) on March 21, 2018, respectively, and 'Figure 7' and 'Figure 8' prepared by Bio-Tech Consulting, Inc., received by EPD on January 9, 2018 and March 26, 2018, respectively.
4. Construction shall be completed within five years from date of issuance of this permit unless extended in writing. Requests for permit extension must be submitted to EPD prior to the expiration date.
5. The onsite enhancement plan must be implemented in accordance with 'Figure 9' of the plans prepared by Bio-Tech Consulting, Inc., received by EPD on March 26, 2018.
6. A time-zero monitoring report shall be submitted within 60 days of completion of planting of the onsite enhancement areas. 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.
7. The permittee is required to conduct annual monitoring and submit annual reports for a period of five years for the onsite enhancement areas. 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.
8. Successful establishment of the onsite enhancement areas will have occurred when:
 - a. at least 90 percent of the planted individuals within each stratum have survived throughout the monitoring period and show signs of normal growth; and

- b. at least 85 percent areal coverage by appropriate and desirable herbaceous wetland species has been obtained in wetlands above the Normal High Water Elevation (NHWE); and
 - c. at least 80 percent areal coverage by appropriate emergent, submerged and floating-leaved vegetation has been obtained below the NHWE; and
 - d. 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
 - e. the above criteria have been met at the end of a five-year monitoring period to the satisfaction of EPD.
9. If at the end of the five-year monitoring period, the enhancement area is not meeting success criteria, the permittee may be required to conduct a supplemental planting and continue monitoring until success has been demonstrated.
10. 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 at every change in bearing greater than 45°. The signage shall conform to the detail and be located as shown on 'Sheet Nos. PSP-2, PSP-4 and PSP-5' of the plans prepared by Kimley Horn, received by DRC on March 21, 2018. The signs shall be installed prior to plat approval.
11. Prior to initiating any construction within wetlands or surface waters to be impacted, EPD shall receive documentation stating that the transaction regarding the transfer of 1.43 freshwater Uniform Mitigation Assessment Method mitigation credits from the Shingle Creek Mitigation Bank has been completed.
12. In the event that the permittee does not successfully complete the transaction to purchase the requisite 1.43 credits from the Shingle Creek Mitigation Bank, the permittee shall obtain a permit modification from the Environmental Protection Officer to provide alternative mitigation for the wetland impacts prior to the commencement of any construction activities.

General Conditions:

13. The operational phase of this permit is effective upon the completion of the construction phase and continues in perpetuity.
14. 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.
15. All excess lumber, scrap wood, trash, garbage, and similar materials shall be immediately removed from any preservation areas.

16. 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.
17. 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>.
18. 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>.

19. 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.
20. The applicant shall provide written notification to property owners that no alteration or encroachment of the platted conservation tracts shall occur unless approved by Orange County. These restrictions shall be recorded as covenants and restrictions on the plat and shall be part of the documents provided to purchasers of lots within the development. A copy of the notification that is to be provided to purchasers shall be submitted to EPD at the time of platting.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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.

26. 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.
27. 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 rights, 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.
28. 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.
29. 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.
30. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
31. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
32. EPD staff shall have permission to enter the site at any reasonable time to inspect the project site to ensure conformity with the plans and specifications approved by the permit.

33. 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.
34. 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.
35. 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.
36. 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-17-02-003 for the National Spa and Resort project site, subject to the conditions listed in the staff report. District 1

JVW/DJ:mg

Attachments

