



Interoffice Memorandum

August 9, 2019

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

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

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

SUBJECT: August 20, 2019 – Public Hearing
Developco, Inc. Conservation Area Impact Permit #CAI-17-04-014
(Related to Case # PSP-16-12-421, CDR-15-10-293, RAG-18-02-008)

On April 10, 2017, Developco, Inc. (applicant) submitted a CAI Permit application requesting 3.48 acres of Class I wetland impacts and 4.15 acres of Class II wetland impacts in order to construct portions of a 74-lot residential subdivision, stormwater pond and conveyance pipe/access road.

The Parcel ID for the site is 27-23-27-0000-00-020 and the address is 7721 Ficquette Road, Windermere. The site is located east of Reams Road and Ficquette Road near the intersection of Summerlake Park Boulevard in District 1.

The project site is 306.78 acres in size and contains 257.71 acres of wetlands: 253.55 acres of Class I wetlands, 4.15 acres Class II wetlands, and 0.01 acres of Class III surface waters. Two upland pockets are located on the site: one in the northern portion of the site and one in the southern portion.

In the northern upland pocket, a 3.14-acre finger (Wetland 1A) of a larger Class I wetland protrudes into the upland pocket from the north. The westernmost portion of this extension of Class I wetlands is of moderately-low quality due to off-road vehicle trails and a historic ditch and associated berm that extends through the middle of the wetland. However, the eastern portion (Wetland 1B) of this same cypress system is of moderate to moderately-high quality due to fewer trails and diminished effect of the ditch. The

northern upland pocket also includes a 4.15-acre Class II wetland (Wetland 2) that is centrally located and of moderately-high quality. This cypress wetland is significantly buffered from development by forested wetlands and uplands. Hydrologic indicators are abundant throughout the system, indicating water levels are normal and support full wetland functionality. The vegetative community has an appropriate mixture of native species with very few occurrences of nuisance/exotic vegetation.

The southern upland pocket is completely surrounded by a very large Class I wetland system, a portion of which is proposed for impact for a stormwater pipe/access road. This cypress and pond-pine system is over 250 acres in size and of high quality. The system is located more than 500 feet away from any development or roads and is significantly buffered from the negative effects of these land uses. The hydrology and vegetative composition of the system is indicative of high wetland functionality, and occurrence of nuisance/exotic species is very low. This system represents an increasingly rare and important habitat corridor for wildlife in Orange County as well as a significant area for natural ecosystem services such as floodwater storage, attenuation, and filtration of pollutants.

The applicant proposes to locate the 74 residential lots within the northern upland pocket. In order to construct the lots, the applicant proposes to completely impact Wetland 1A, Wetland 1B and Wetland 2. In the southern upland pocket, the applicant proposes to construct a large stormwater pond to receive the stormwater from the northern development area. The applicant is proposing 0.34 acre of impacts to the large onsite Class I wetland for the construction of an access road and associated stormwater pipe that would traverse the Class I wetland. The separation of the portions of the wetland on the adjoining property to the west from the portion of the wetland on the applicant's property to the east would be expected to have a deleterious effect on the overall wetland function. No impacts are proposed to the Class III surface water. As mitigation for the wetland impacts, the applicant has proposed to preserve the remaining onsite wetlands and uplands by placing them in a conservation easement. The total area of onsite preservation would be 250.1 acres of wetlands, 5.1 acres of upland buffers, and 7.7 acres of additional upland areas.

Pursuant to Orange County Code, Chapter 15, Article X, EPD staff has evaluated the permit application and required documentation. The removal, alteration or encroachment of 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. The applicant must also demonstrate that impacts to all classes of wetlands have been adequately avoided or minimized.

EPD brought this application as a discussion item before the Development Review Committee (DRC) on August 9, 2017. EPD was seeking input from the DRC on whether the applicant sufficiently demonstrated adequate minimization or elimination of wetland impacts and whether the proposed Class I wetland impacts were necessary to achieve a reasonable use of the land. The DRC discussed the proposed impacts and concluded that they had no issue with the proposed wetland impacts in the northern development area; however, they would not recommend approval of the Class I wetland impacts for the stormwater pipe and access road to the south that are necessary for the stormwater pond to be placed in the southern development area.

Following the discussion at the DRC meeting, EPD sent a letter to the applicant on August 21, 2017 stating that EPD did not fully support the request for the wetland impacts. The applicant was given the following options: (1) move forward to the Board with a recommendation of approval for the impacts for the lots in the northern development area and denial of the wetland impacts for the pipe and access road; (2) revise the plans to reflect a project that DRC and EPD can support; or (3) withdraw the CAI permit application. On August 25, 2017, the applicant provided a response and selected option #1. However, the Preliminary Site Plan (PSP) was not ready to move forward to the Board. After an extended period without any progress, the CAI permit application was closed.

On July 2, 2018, the applicant submitted a new CAI permit application to move forward with the same proposed development plan that was previously reviewed by EPD. During the review process, EPD staff attended the January 9, 2019 DRC meeting where the proposed PSP was being discussed. After discussion, the DRC recommended that the applicant research alternative plans that would reduce Class I wetland impacts to access the southern development area. On January 23, 2019, EPD returned to DRC to discuss the alternative plans (primarily focused on the stormwater pipe and access road location). However, every alternative plan resulted in greater Class I wetland impacts than the original proposed plan. During the discussion, a suggestion was made to the applicant that if the number of units were reduced, a stormwater pond may fit in the northern development area without additional wetland impacts. The applicant indicated that they would not be making any changes to the site plan. Therefore, EPD moved forward with scheduling a public hearing.

Staff Recommendation

Based on the documentation and justifications provided, the applicant has not demonstrated to EPD or DRC that no other feasible or practical alternatives exist that will permit a reasonable use of the land. In addition, the applicant has not demonstrated that the project has been designed so as to minimize or eliminate any impact upon the beneficial environmental productivity of the Class I wetlands. Limiting the development to the northern upland pocket would reduce direct wetland impacts and enhance the overall viability of the wetland system, which extends beyond the applicant's property.

Notification of the public hearing was sent on July 25, 2019 to the applicant and authorized agent. Notification of the adjacent property owners is not required.

There is no current enforcement action on the subject property.

A public hearing was scheduled for June 18, 2019 for this Conservation Area Impact (CAI) request. The applicant requested a continuance to August 20, 2019. No additional information has been received by the Environmental Protection Division (EPD) since that date.

ACTION REQUESTED: Denial of Conservation Area Impact Permit CAI-17-04-014 for Developco, LLC. District 1

However, in the event the Board approves this request, the following conditions of approval are recommended:

Specific Conditions

1. This permit shall become final and effective upon expiration of the 30 calendar day period following the date of rendition of the Board of County Commissioners. (Board) 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 operational phase of this permit is effective upon completion of construction and continues in perpetuity.
3. The wetland impacts must be completed in accordance with 'Exhibit 2A' and 'Exhibit 2B' prepared by VHB, received by the Environmental Protection Division (EPD) on July 3, 2018. 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.
4. The mitigation plan must be implemented in accordance with the 'Impact Assessment and Mitigation Plan' received by EPD on July 3, 2018. The preservation area should include 250.09 acres of wetland, 5.07 acres of upland buffer, and 7.71 acres of additional onsite uplands (262.87 acres total).
5. Conservation areas shall be clearly marked with signage that identifies the wetland and upland buffer. 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 shown on Sheet C-6 of PSP-16-12-421. The signs shall be located as shown on Sheet C-5 of PSP-16-12-421. The signs shall be installed prior to the approval of the mass grading plans or subdivision construction plans.
6. Prior to beginning construction, the permittee must demarcate the boundaries of all wetland and upland conservation areas with six foot high PVC poles with orange flagging tied to the tops or orange safety fencing. Initial clearing shall include a path along the limit of construction to facilitate installation of silt fence and form a visual limit of clearing. After the initial clearing adjacent to the conservation areas is complete, a silt fence must be installed all along the conservation easement boundaries and maintained throughout construction.
7. 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.
8. 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.
9. Prior to EPD approval of any subdivision construction plans or mass grading plans that depict wetland or surface water impacts that require mitigation, this permit requires the recording of a conservation easement (CE) in the public records of Orange County, and when applicable, notation of the CE on the corresponding plat. The CE shall be dedicated to Orange County and cannot be recorded unless and until the conservation easement is accepted and approved by the Board. The CE shall include restrictions on the real property pursuant to the requirements set forth below:

- a. Within 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 CE 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 CE identifies and is executed by the correct grantor who must hold sufficient record title to the land encumbered by the CE. 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 (REM).
 - b. The CE shall be in a form approved by the Orange County Attorney's Office (OCAO), and REM, and provided to the permittees. Pursuant to Section 704.06, FS, the CE shall prohibit all construction, including clearing, dredging, or filling, except that which this permit specifically authorize. The CE shall contain the provisions set forth in Section 704.06(1)(a) through (h), FS. The CE shall contain provisions that grant the County the right to access and inspect the CE area, and to enforce the terms and conditions of the CE. Unless specifically prohibited by law, the CE shall include a provision whereby the permit holder shall warrant title and agree to defend the same. The Grantor shall not amend the CE without approval by the Board.
 - c. If the grantor of the CE is a partnership, the partnership shall provide to EPD a partnership affidavit stating that the person executing the CE has the legal authority to convey an interest in the partnership land.
 - d. 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 CE which shall be subject to review and approval of the OCAO and REM. The consent and joinder of mortgagee shall be recorded simultaneously with the CE in the public records of Orange County at the permit holder's sole expense.
 - e. Upon approval of the final executed documents by Orange County, the CE 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.
 - f. If during the review of the submitted evidence of title, REM 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 Board approval.
10. 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.
11. 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.

12. 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) Florida Administrative Code (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/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>.
13. 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 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 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>.
14. Discharge of groundwater from dewatering operations requires approval from FDEP and the applicable Water Management District. The operator/contractor shall obtain an 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.

General Conditions

15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
22. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
23. EPD staff, with proper identification, shall have permission to enter the site at any reasonable time to ensure conformity with the plans and specifications approved by the permit.

24. 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.
25. 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.
26. 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.
27. Pursuant to Section 125.022, FS, 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.
28. Pursuant to Section 125.022, FS, the applicant shall obtain all other applicable state or federal permits before commencement of development.

JVW/DDJ: mg

Attachments

Conservation Area Impact Permit Application

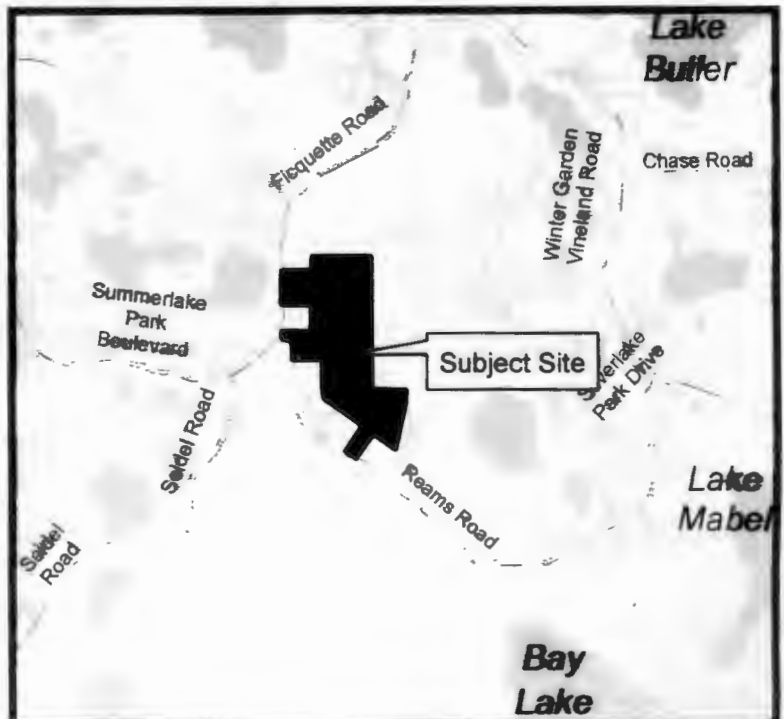


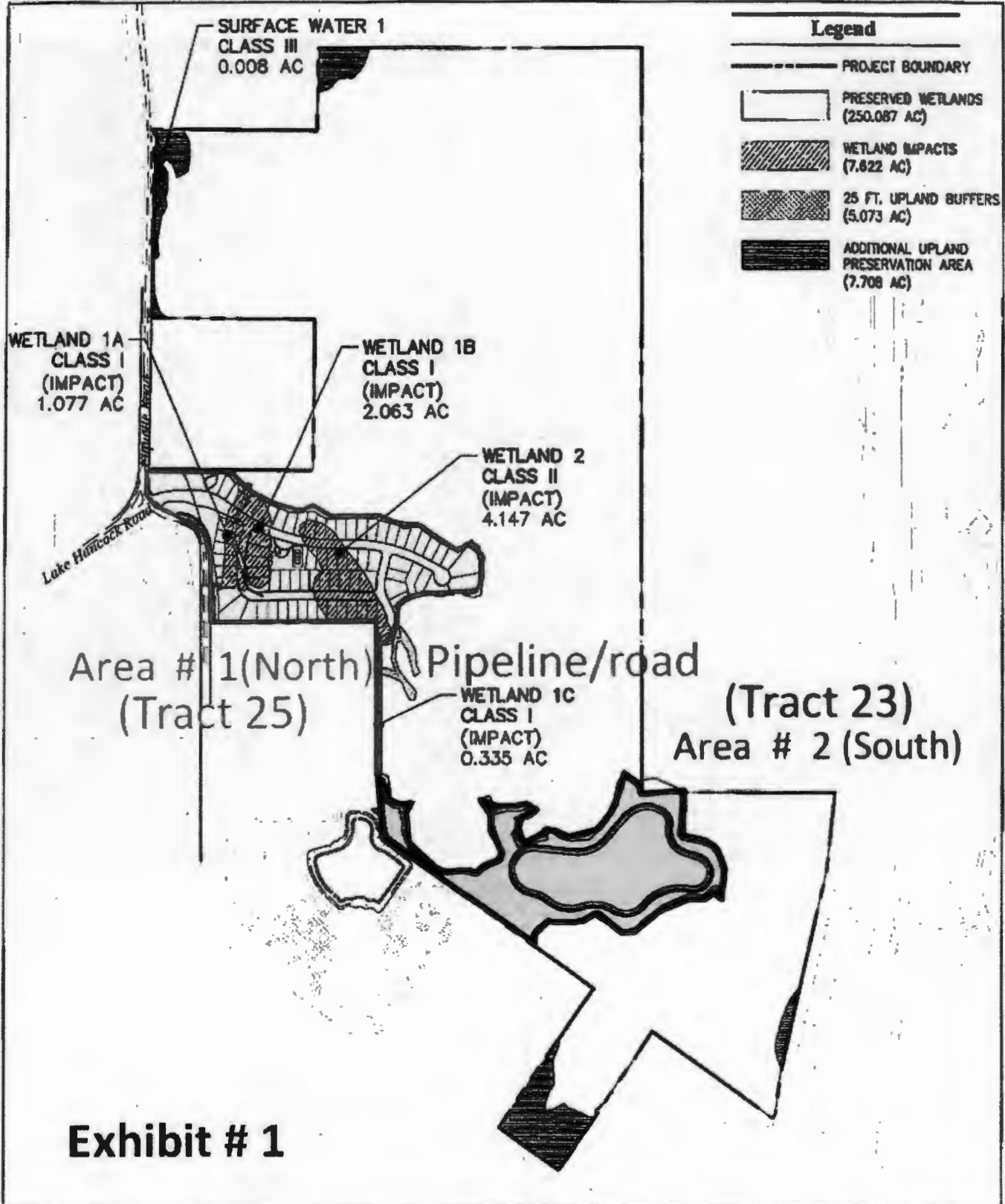
**Conservation Area Impact
Permit Application
CAI-17-04-014
District #1**

Applicant: Developco, Inc.
Address: 7721 Ficquette Road
Parcel ID: 27-23-27-0000-00-020

Project Site 

Property Location 





225 E. Robinson Street, Suite 300
Orlando, Florida 32801 | 407.839.4006

Developco PD

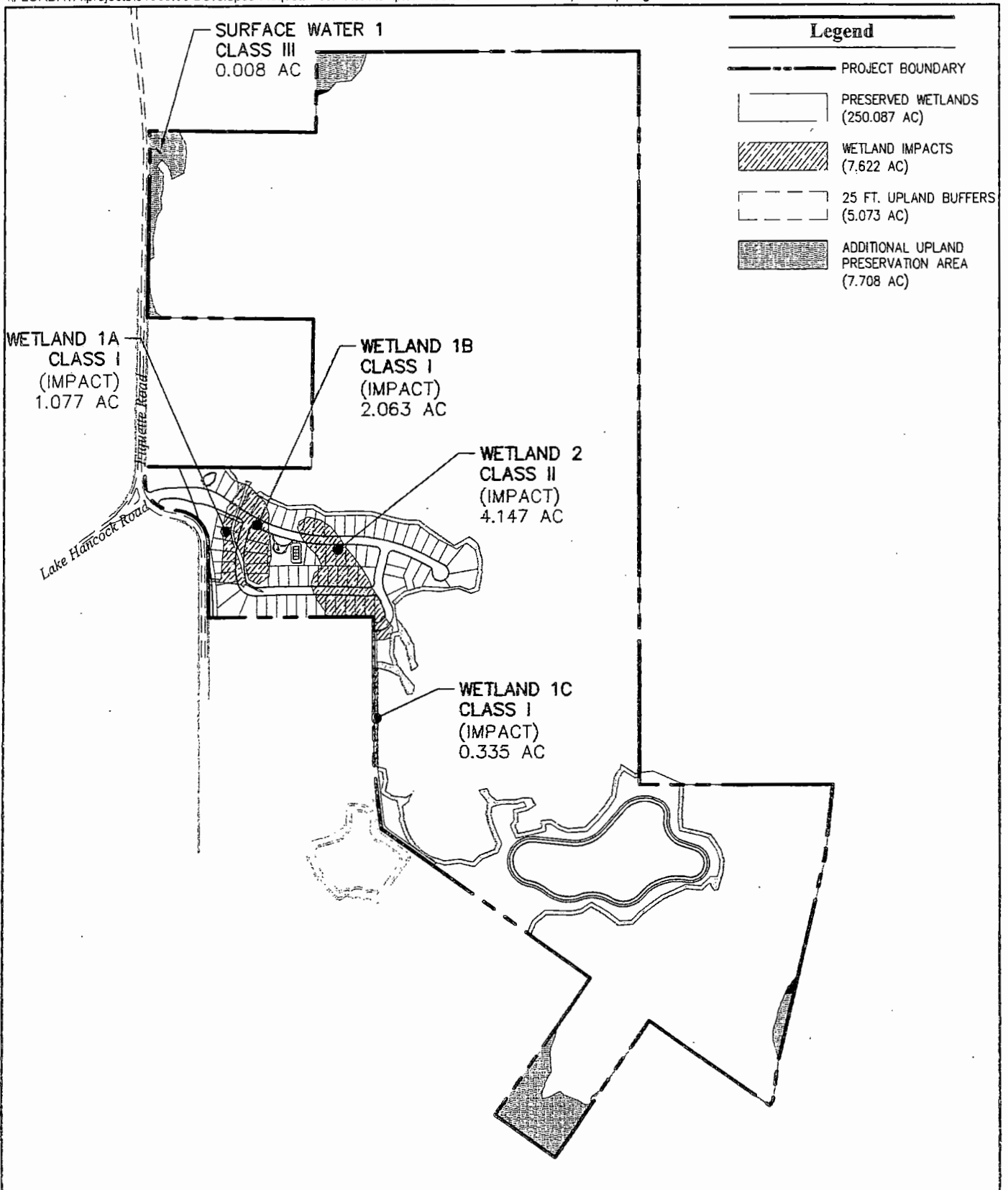
Exhibit 2A

Wetland Impact and Mitigation Map

April 2017

0 400' 800' 1600'





225 E. Robinson Street, Suite 300
Orlando, Florida 32801 : 407.839.4006

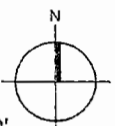
Developco PD

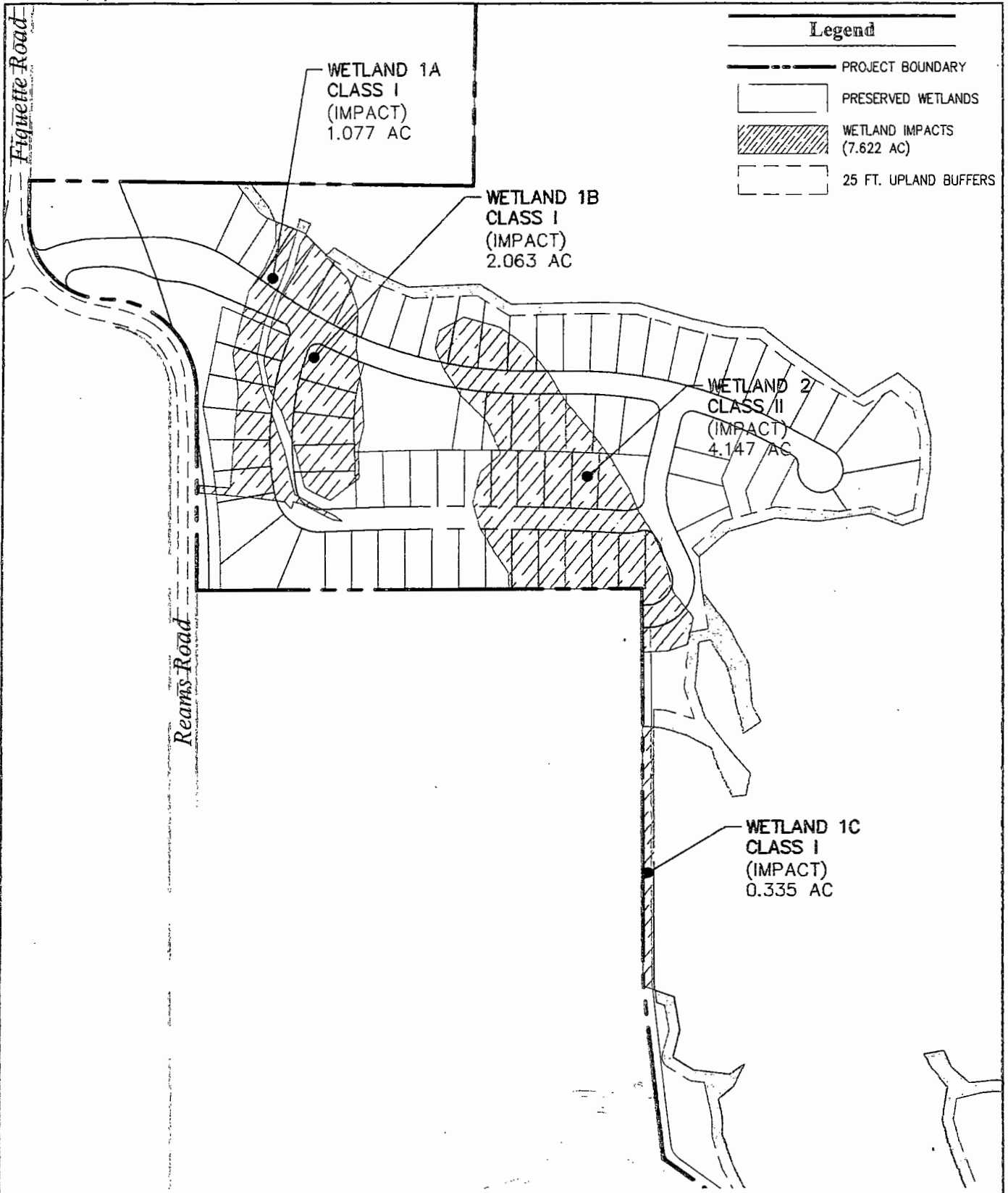
Exhibit 2A

Wetland Impact and Mitigation Map

April 2017

0 400' 800' 1600'





225 E. Robinson Street, Suite 300
Orlando, Florida 32801 · 407.839.4006

Developco PD

Exhibit 2B

Wetland Impact Details Map

April 2017

0 150' 300' 600'

