



## Interoffice Memorandum

April 16, 2020

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) 836-1406**

SUBJECT: May 5, 2020 – Public Hearing  
Developco, Inc. Conservation Area Impact Permit #CAI-17-04-014 (Related to Case Nos. PSP-16-12-421, CDR-15-10-293, RAG-18-02-008)

### **Background**

On April 10, 2017, Developco, Inc. (applicant) submitted a Conservation Area Impact (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. During a public hearing on August 20, 2019, the Board remanded the application back to staff and the applicant to work on revisions to the site plan to reduce the wetland impacts. Subsequently, the applicant revised the site plan by reducing the amount of residential lots from 74 to 57 and relocating the stormwater pond that was previously proposed for the southern upland island to the northern portion of the development. The southern upland island is now proposed to be used solely as a compensating storage area tract. The applicant is now proposing 3.32 acres of Class I wetland impacts, 4.15 acres of Class II wetland impacts, and 0.17 acre of temporary Class I wetland impacts. In addition, the original plan called for construction of an elevated access road and associated stormwater pipe that would have separated the portion of the Class I wetland on the adjoining property to the west from the portion of the wetland on the applicant's property to the east, which would have been expected to have a deleterious effect on the overall wetland function. Relocation of the stormwater pond to the northern part of the development will make the elevated access road unnecessary. An at-grade, rock-base road of significantly less width to provide access to the compensating storage area for infrequent maintenance should have significantly less impact on the overall wetland function.

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.

### **Site Conditions**

The overall project site is 306.78 acres and contains 257.71 acres of wetlands: 253.55 acres of Class I wetlands, 4.15 acres Class II wetlands, and a 0.01 acre Class III surface water. 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. 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.

### **Permit Request History**

The applicant originally proposed to locate 74 residential lots within the northern upland pocket. In order to construct the lots, the applicant proposed to completely impact Wetland 1A, Wetland 1B and Wetland 2. In the southern upland pocket, the applicant proposed to construct a large stormwater pond to receive the stormwater from the northern development area. The applicant proposed 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 were proposed to the Class III surface water.

The Environmental Protection Division (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 had 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 could 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.

The CAI Permit request was presented at a public hearing before the Board on August 20, 2019. EPD recommended denial based on the fact the applicant had not demonstrated that no other feasible or practical alternatives exist that would permit a reasonable use of the land or that the project had been designed so as to minimize or eliminate any impact upon the beneficial environmental productivity of the Class I wetlands. At the public hearing, the Board remanded the application back to staff and the applicant to work on reducing the wetland impacts and revisions to the site plan.

### **Current Request**

Following the public hearing, the applicant met with EPD staff to discuss options for the proposed development. The applicant revised the site plan and reduced the amount of

residential lots from 74 to 57. In order to construct the lots, the applicant proposes to completely impact Wetland 1A (1.08 acres) Wetland 1B (2.06 acres) and Wetland 2 (4.15 acres). The stormwater pond that was previously proposed for the southern upland island has been relocated to the northern development.

The southern upland island is now being proposed to be used solely as a compensating storage area tract. A temporary 20-foot wide, rock-base access road will be used to access the compensating storage area during construction. The proposed road will utilize portions of an existing pathway which will minimize impacts to the wetland system. When construction is completed, 10 feet of the 20-foot access road will be restored by replanting trees, leaving a permanent 10-foot wide, at-grade access road to allow for maintenance of the compensating storage area. Monitoring and maintenance of the restoration area will be completed semi-annually for five years to ensure the successful establishment of the planted trees and to treat and remove invasive and exotic vegetation. This will result in 0.17-acre temporary wetland impacts and 0.17-acre permanent wetland impacts for the access road. Access to the compensating storage area tract is intended to be very infrequent and is discouraged except in the case of emergency maintenance. A fence and gate will be installed at the entrance of the access road to prohibit unauthorized use. In total, the applicant is proposing 3.32 acres of Class I wetland impacts, 4.15 acres of Class II wetland impacts, and 0.17 acre of temporary Class I wetland impacts. As mitigation, the applicant is proposing to preserve the remaining onsite wetlands (248.84 acres) and uplands (5.88 acres) in a conservation easement. The proposed mitigation adequately offsets the impacts.

Notification of the public hearing was sent on April 9, 2020 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.

### **Staff Recommendation and Findings**

Pursuant to Sec. 15-396(3)(a) and (b), based on the documentation and justifications, the applicant was able to demonstrate to EPD that:

- The proposed impacts to Wetlands 1A, 1B, and 1C are a reasonable use of the land and that the project has been designed to minimize any impact upon the beneficial environmental productivity of the Class I wetlands by essentially limiting the development to the northern upland pocket. Furthermore, the applicant has demonstrated that protection, preservation and continuing viability of Class I conservation areas is accomplished through the proposed mitigation.
- The proposed impacts to Wetland 2 are unavoidable and the mitigation is in the public interest.

EPD staff has evaluated the proposed CAI Permit Application and required documentation and has made a finding that the request is consistent with Orange County

Code, Chapter 15, Article X, Section 15-362(5) and Section 15-396(3)(a) and (b) and recommends approval of CAI Permit #17-04-014, subject to the conditions listed below.

**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 January 24, 2020. Construction shall be completed within five 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.
4. The mitigation plan must be implemented in accordance with the 'Exhibit 2A' received by EPD on January 24, 2020. The preservation area should include a minimum of 248.84 acres of wetlands, 5.06 acres of upland buffer, and 5.88 acres of additional onsite uplands (259.78 acres total).
5. The restoration of the temporary impacts due to the access road must be implemented in accordance with the 'Corridor Restoration and Monitoring Plan' received by EPD on November 14, 2019.
6. 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.
7. 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.

8. 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.
9. 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.
10. Prior to initiating any construction within the wetlands, surface waters, or upland buffers 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 must be dedicated to Orange County and cannot be recorded unless and until the CE is accepted and approved by EPD and the Orange County Real Estate Management Division (REM). The CE must include restrictions on the real property pursuant to Section 704.06, Florida Statutes and 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 EPD-approved mitigation plan. The Orange County Surveyor must approve the final sketch and legal description.
  - b. The permit holder shall ensure that the CE 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 must contemporaneously submit current evidence of title of the proposed easement area to EPD. The evidence of title is subject to review and approval by REM.
  - c. If the impacts are to an upland defined as River Corridor Protection Zone (Chapter 15, Article XI, Section 15-443(1)), or to a required upland buffer as defined by Chapter 15, Article XI, Section 15-442(f), or to a wetland or surface water for which mitigation is required and authorized to occur in discrete phases, the areas to be preserved to offset such impacts may be placed under a CE in phases, such that impacts are offset prior to the commencement of work within the phase that the impacts are permitted occur. Such phasing of preservation can only occur if it has been proposed in the mitigation plan and approved by this permit. A surveyor's sketch and legal description of the area to be placed under CE must be submitted in accordance with paragraph (a) above prior to commencement of each phase.

- d. The CE must be in a form approved by the Orange County Attorney's Office (OCAO) and REM. Consistent with Section 704.06, Florida Statutes (FS), the CE must prohibit all construction, including clearing, dredging, or filling, except that which this permit specifically authorizes. The CE must contain the provisions set forth in Section 704.06(1)(a) through (h), FS. The CE must 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 must include a provision whereby the permit holder shall warrant title and agree to defend the same. The grantor cannot amend the CE without written approval by the County.
  - e. If the grantor of the CE is a partnership, the partnership must 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.
  - f. If any mortgages or financial encumbrances exist on the land, the permit holder shall ensure an appropriate consent and joinder is executed subordinating the mortgage or financial interest to the CE, which must be reviewed and approved by the OCAO and REM. The consent and joinder of mortgagee must be recorded simultaneously with the CE 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 CE and its attachments must be recorded in the public records of Orange County, at the permit holder's sole expense.
  - h. At least 45 days prior to whichever comes first: (1) dredging, filling, or clearing of any wetland or surface water for which mitigation is required; (2) clearing any upland within the River Corridor Protection Area or any required upland buffer as defined per Chapter 15, Article XI, Section 15-442(f); (3) the sale of any lot or parcel; (4) the recording of the subdivision plat; or (5) use of the infrastructure for its intended use, the permit holder shall submit to EPD a copy of the preliminary plat depicting the area to be encumbered by the CE.
  - i. If during the review of the submitted evidence of title, REM finds any encumbrances or irregularities that will render the proposed mitigation inadequate to offset the impact(s), the permit holder shall submit a revised mitigation plan for EPD staff to review and approve. The revised mitigation plan may require approval by the Board.
11. 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.

12. 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.
13. 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 CGP pursuant to the requirements of 62-621.300(4)(a) Florida Administrative Code (F.A.C.). As the Operator of the 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>.
14. 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>.
15. 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**

16. 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.
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.

**ACTION REQUESTED:**    **Acceptance of the findings and recommendation of Environmental Protection Division staff to approve the request for Conservation Area Impact Permit CAI-17-04-014 for Developco, LLC subject to conditions listed in the staff report. District 1**

JVW/DDJ: mg

Attachments

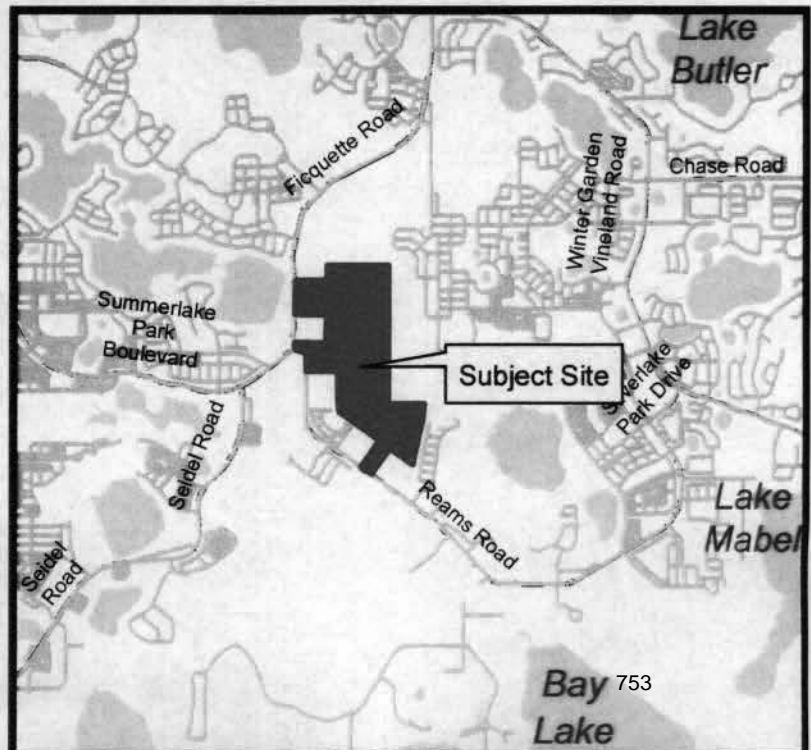
# Conservation Area Impact Permit Application

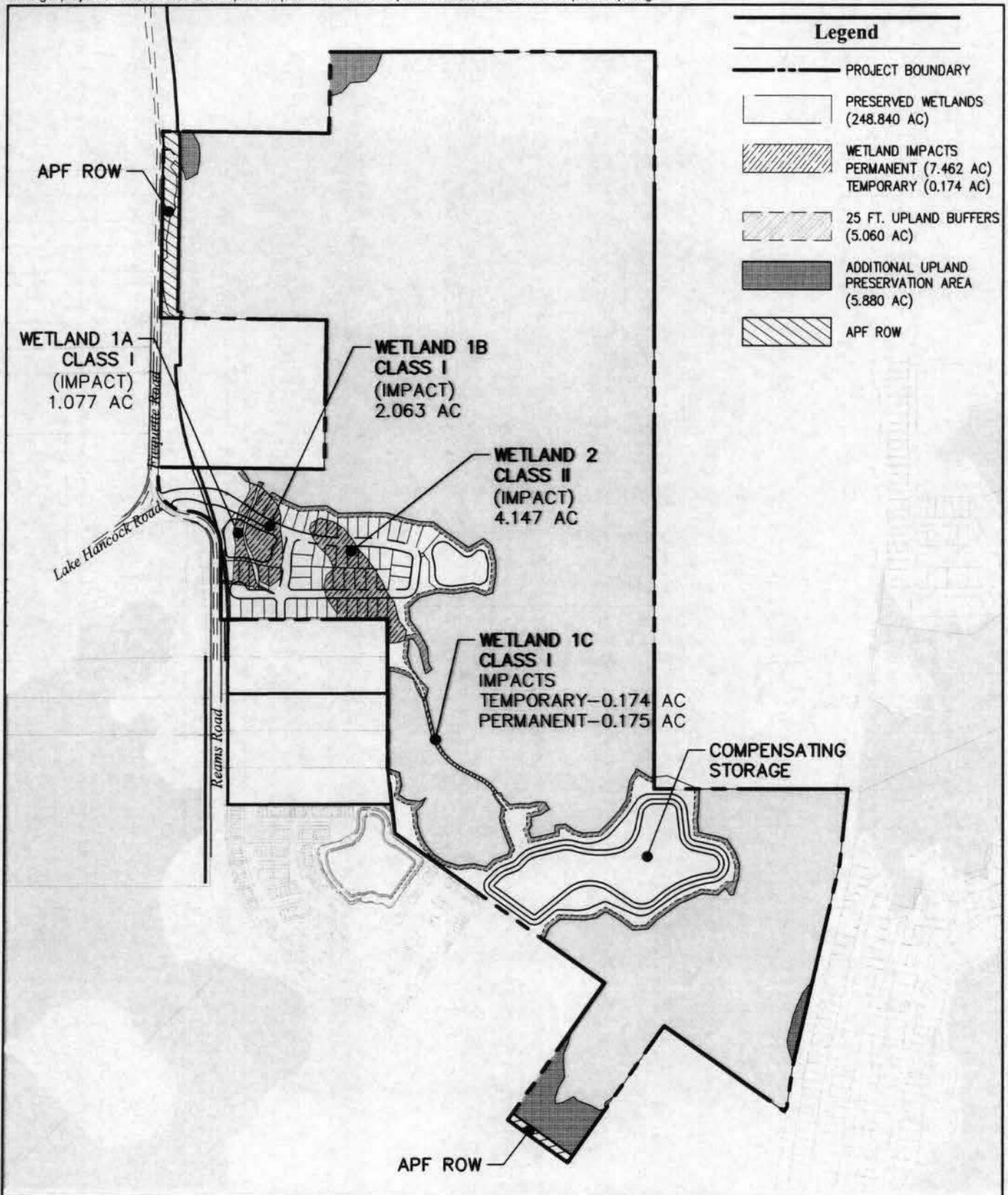


**Conservation Area Impact  
Permit Application**  
**CAI-17-04-014**  
**District #1**

**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

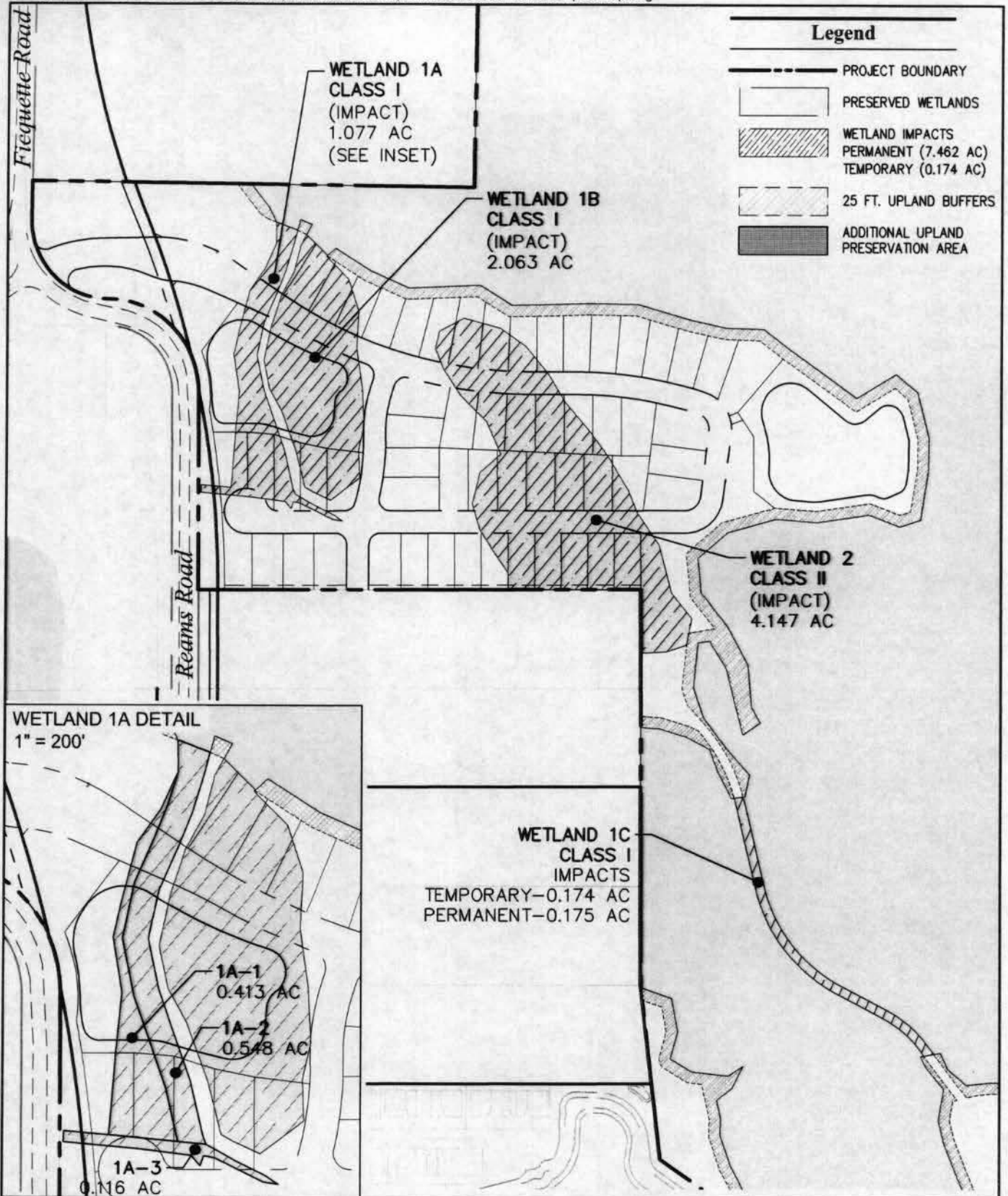
Wetland Impact and Mitigation Map

January 2020

0 400' 800' 1600'







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

Developco PD

Exhibit 2B

Wetland Impact Details Map

January 2020

0 150' 300' 600'

