



## Interoffice Memorandum

September 28, 2021

TO: Mayor Jerry L. Demings  
-AND-  
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: October 26, 2021– Public Hearing  
Shoreline Alteration/Dredge and Fill Permit Application for  
James Willard (SADF-21-02-004)

The applicant, James Willard, is requesting a Shoreline Alteration/Dredge and Fill (SADF) permit to authorize the construction of a new, 91-foot long vinyl seawall with riprap and plantings along the shoreline of Lake Butler for the property located at 228 W. 7<sup>th</sup> Ave, Windermere, FL 34786. The Parcel ID for the site is 17-23-28-9336-01-250. The subject property is located in District 1.

The applicant is proposing to construct a new seawall along the entire length of their shoreline at the Normal High Water Elevation (NHWE) of Lake Butler. A 10-foot return will be installed on the eastern side and a 16-foot return on the western side of the seawall. Riprap and plantings will be installed waterward of the new seawall. There are no existing seawalls on the adjacent properties; however, there is a concrete, public boat ramp for Town of Windermere residents on the adjacent parcel to the west and there are numerous other seawalls on Lake Butler. Additionally, the applicant provided a letter from a Professional Engineer stating that construction of a new vertical seawall is the most practical method to stabilize and prevent further erosion of the shoreline. There has been no enforcement action taken by EPD on the subject property.

Portions of the proposed seawall will extend waterward of the NHWE and shoreline wetlands, comprising an area of surface waters and wetlands to be backfilled behind the wall approximately 1,124 square feet (0.03-acre) in size. The applicant has stated that the proximity to the Town of Windermere boat ramp creates an unusual amount of boat wake, and that unusual storm events have contributed to the erosion along the shoreline. During review of the application, the applicant provided historic photographs and additional information that indicate severe shoreline erosion has indeed occurred over several decades, and that the location of the proposed wall will be similar to where the NHWE was located historically. In addition, the proposed location minimizes potential impacts to mature cypress trees along the shoreline that might be affected to a greater degree if the wall were located more landward. To offset the 0.03-acre of impacts to wetlands and surface waters, the applicant will purchase 0.02 state, herbaceous wetland mitigation credits from the Twin Oaks Mitigation Bank located in Osceola County. The

applicant has also agreed to plant four 7-gallon cypress trees in front of the proposed seawall to offset any potential impacts to the existing cypress trees.

In accordance with Orange County Code, Chapter 33, Article IV, Section 33-129(d), notification of the public hearing was sent to property owners within 500 feet of the project site. No objections were received.

Pursuant to Orange County Code, Chapter 33, Article IV, EPD staff has evaluated the proposed SADF application and required documents and has made a finding that the request is consistent with Section 33-129.

### **Staff Recommendation**

Approval of the SADF permit, subject to the following conditions:

#### **Specific Conditions:**

1. This permit shall become final and effective upon expiration of the 30-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 all appeals are resolved.
2. Construction activities shall be completed in accordance with the engineered plans signed and sealed by Darcy Unroe, P.E., received by the Environmental Protection Division (EPD) on July 13, 2021. The permitted activity must commence within six months and be completed within two years from the date of issuance of the permit. In the event that the project has not commenced within six months or been completed within two years, this permit shall be void and a new permit application will be required.
3. Prior to approval of a building permit or construction plans, the applicant shall submit to EPD documentation indicating that the purchase of 0.02 state, herbaceous wetland mitigation credits from the Twin Oaks Mitigation Bank has been completed.
4. Riprap and plantings shall be installed waterward of the new seawall in accordance with the 'Seawall Installation Plan' received by EPD on July 13, 2021.
5. Riprap shall be installed at a 2 (horizontal): 1 (vertical) slope, and extend at least halfway up the face of the seawall.
6. Installation of aquatic plantings must be initiated within 30 days after the installation of the riprap. After one year, if 80% coverage of native, emergent or aquatic plant species is not established, additional replanting may be required.
7. Any permit extensions for the activities authorized herein may be approved by way of Consent Agenda if there are no changes.
8. This permit does not authorize any dredging or filling except that which is identified on the site plan and necessary for the installation of the seawall and riprap.

General Conditions:

9. 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 the approved drawings, plans, and other documents attached hereto or on file with EPD.
10. The permittee binds himself and any successors to comply with the provisions and conditions of this permit. If EPD determines at any time that activities 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 holders and/or agent promptly thereafter.
11. A copy of this permit, along with EPD stamped and approved drawings, should be taken to the Orange County Zoning Division (OCZD) at 201 South Rosalind Avenue for approval. For further information, please contact the OCZD at (407) 836-5525.
12. After approval by the OCZD, the certified site plans will need to be reviewed by the Orange County Building Safety Division (OCBSD) in order to obtain a building permit. For further information, please contact the OCBSD at (407) 836-5550.
13. 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.
14. 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 of the seawall.
15. 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.
16. 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 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 remove the offending structure or encroachment within 60 days from the date of adjudication. Failure to comply shall constitute a material breach of this permit and shall be grounds for its immediate revocation.
17. 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 33, Article IV of the Orange County Code.

18. 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.
19. The permittee is hereby advised that Section 253.77 Florida Statutes (FS), states that a person may not commence any excavation, construction, or other activity involving the use of sovereignty 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.
20. Should any other regulatory agency require changes to the property or permitted activities, 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 shall have permission to enter the site at any reasonable time to inspect the property for conformity with the plans and specifications approved by the permit.
24. The permittee shall hold and save the County harmless from all damages, claims or liabilities, which may arise because 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. Turbidity and sediments shall be controlled to prevent violations of water quality pursuant to Rules 62-302.500, 62-302.530(70) and 62-4.242 Florida Administrative Code. Best Management Practices, as specified in the Florida Stormwater, Erosion, and Sedimentation Control Inspector's Manual, shall be installed and maintained at all locations where the possibility of transferring suspended solids into wetlands and/or surface waters may occur due to the permitted activity. If site specific conditions require additional measures, then the permittee shall implement them as necessary to prevent adverse impacts to wetlands and/or surface waters.

28. Pursuant to Section 125.022 FS, issuance of this permit by the County does not in any way create any rights on the part of the permittee 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 permittee fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertake actions that result in a violation of state or federal law.
29. Pursuant to Section 125.022 FS, the permittee shall obtain all other applicable state or federal permits before commencement of the activity authorized herein.

**ACTION REQUESTED:**     **Acceptance of the findings and recommendation of the Environmental Protection Division staff and approval of Shoreline Alteration/Dredge and Fill Permit SADF-21-02-004 for James Willard, subject to the conditions listed in the staff report. District 1**

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Attachments