

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

NANCY CONDRON,

Petitioner,

SJR 2016-10

v.

DOAH Case No. 16-0806

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT
and 1044PVB, LLC,

SJRWMD F.O.R. No. 2016-04

Respondents.

_____ /

FINAL ORDER

1. 1044PVB, LLC (“Applicant”) applied for an environmental resource permit (ERP) to construct a stormwater management system for a proposed residential subdivision in St. Johns County. The St. Johns River Water Management District (“District”) issued the permit on January 8, 2016.

2. Nancy Condron (“Petitioner”) requested an administrative hearing to challenge the issuance of the permit. The primary issue is whether Applicant’s ERP application No. IND-109-143282-1 for a stormwater management system is consistent with the standards and criteria for issuance of a permit as set forth in Part IV of Chapter 373, Florida Statutes, and Rules 62-330.301 and 62-330.302, Florida Administrative Code.

3. On April 25-26, 2016, the Honorable Bram D. E. Canter, an Administrative Law Judge from the Division of Administrative Hearings (“ALJ”), conducted a hearing on the petition. On June 16, 2016, he submitted to the District and all the parties to this proceeding a Recommended Order, a copy of which is attached as “Exhibit A.”

4. The Recommended Order advised the parties that they had 15 days to file exceptions to the Recommended Order with the District. On June 16, 2016, counsel for the

Governing Board of the District sent all the parties a letter advising them of their right to file exceptions to the Recommended Order. Neither the Petitioner, the District, nor Applicant submitted exceptions to the Recommended Order. Therefore, the parties waived their objections to the ALJ's findings of fact and conclusions of law. Henderson v. Dep't of Health, Bd. of Nursing, 954 So. 2d 77, 81 (Fla. 5th DCA 2007); Worster v. Dep't of Health, 767 So. 2d 1239, 1240 (Fla. 1st DCA 2000); Env'tl. Coal. of Florida, Inc. v. Broward County, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991). However, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction, even when exceptions are not filed. See § 120.57(1)(l), Fla. Stat. (2016); Barfield v. Dep't of Health, 805 So. 2d 1008 (Fla. 1st DCA 2001).

5. Pursuant to Section 373.079(4), Florida Statutes, the Governing Board of the District has delegated all of its authority to take final action approving permit applications under Part IV of Chapter 373, Florida Statutes, to specific staff, including the District's Executive Director. Because both the ALJ and counsel for the Governing Board of the District recommend approval of the permit, this matter now comes before me as the District's Executive Director for final agency action.

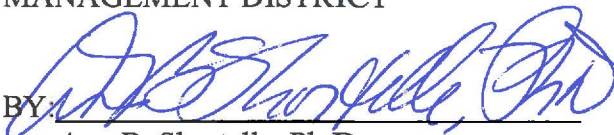
6. The ALJ's Recommended Order concluded that the application was consistent with the standards and criteria for issuance of a permit and therefore recommended that the District enter a final order approving Applicant's application and issuing the permit subject to the conditions set forth in the April 11, 2016, Technical Staff Report, a copy of which is attached hereto as Exhibit "B." I concur with the Recommended Order.

Accordingly, **IT IS ORDERED** that:

The June 16, 2016, Recommended Order attached hereto as Exhibit "A," is **ADOPTED**.
Environmental Resource Permit application IND-109-143282-1 is **APPROVED** with the
conditions set forth in the Technical Staff Report attached hereto as Exhibit "B."

DONE AND ORDERED on this 25th day of July 2016, in Palatka, Florida.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY: 
Ann B. Shortelle, Ph.D.
Executive Director

RENDERED this 25th day of July 2016.

BY: Sandra Bertram
Sandra Bertram
District Clerk

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NANCY CONDRON,

Petitioner,

vs.

Case No. 16-0806

ST. JOHNS RIVER WATER MANAGEMENT
DISTRICT AND 1044PVB, LLC,

Respondents.

_____ /

RECOMMENDED ORDER

The final hearing in this case was held on April 25 and 26, 2016, in Jacksonville, Florida, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Jane West, Esquire
Josh Smith, Esquire
Jane West Law, P.L.
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St. Augustine, Florida 32080

For Respondent 1044PVB, LLC:

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Amelia A. Savage, Esquire
Hopping, Green and Sams, P.A.
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For Respondent St. Johns River Water Management District:

Karen C. Ferguson, Esquire
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177

STATEMENT OF THE ISSUE

The issue to be determined in this case is whether 1044PVB, LLC ("Applicant"), is entitled to Environmental Resource Permit ("ERP") No. IND-109-143282-1 from the St. Johns River Water Management District ("District"), authorizing the construction of a surface water management system to serve a proposed residential development in St. Johns County, Florida.

PRELIMINARY STATEMENT

On January 8, 2016, the District gave notice of its intent to issue an ERP to Applicant to construct a surface water management system for a proposed single-family subdivision ("the Project"). On January 29, 2016, Petitioner filed a petition challenging the proposed agency action. The District then referred the matter to DOAH to conduct an evidentiary hearing.

At the final hearing, Joint Exhibits 1-3 were received into evidence. Official recognition was taken of the Environmental Resource Permit Applicant's Handbook ("Applicant's Handbook"), Volumes I and II, as well as Florida Administrative Code Chapters 40C-4 and 62-330.

Petitioner presented the testimony of: Nancy Condron; Harold Wilkening, accepted as an expert in water resources engineering and stormwater management; and Dr. David Stites, accepted as an expert in aquatic ecology, environmental science, and applied biology. Petitioner's Exhibits 3, 4, 15, 30, and 32 were received into evidence.

Applicant presented the testimony of: Rhodes Robinson, accepted as an expert in environmental science, ecology, biology, and wetland ecology; Thomas Welch, accepted as an expert in stormwater management systems and civil engineering; and Ki Pak, accepted as an expert in hydraulic modeling, flood plain analysis, hydrologic engineering, and hydraulic engineering. Applicant's Exhibits 1-4 were received into evidence.

The District presented the testimony of: Cameron Dewey, accepted as an expert in water resources engineering; Walter Esser, accepted as an expert in wildlife ecology and wetland mitigation; and Everett Frye, accepted as an expert in water resources engineering. District Exhibits 1-4 were received into evidence.

The three-volume Transcript of the final hearing was filed with DOAH. Respondents submitted proposed recommended orders that were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties

1. Petitioner Nancy Condron is a resident and landowner in St. Johns County. Her residence is located across Ponte Vedra Boulevard from the Project.

2. Petitioner uses the nearby Guana River Wildlife Management Area for nature-based recreation, including hiking and bird-watching.

3. Applicant is a foreign limited liability company and the applicant for the ERP at issue in this case.

4. The District is an independent special district granted powers and assigned duties under chapter 373, Florida Statutes, including powers and duties related to the regulation of construction activities in wetlands. The Project is within the boundaries of the District.

The Project Site

5. The Project site is 17.13 acres located at 1044 Ponte Vedra Boulevard in St. Johns County, Florida.

6. The site currently consists of forested lands on the east and west and pasture areas in the middle. There is an existing trail road that runs the length of the property and a small residence.

7. The site has four small ponds excavated as watering holes, ranging in size from 0.04 to 0.24 acres.

8. There are 4.41 acres of wetlands and other surface waters on the site. There is a 3.49-acre area of mixed forested wetland on the site that continues offsite to the south and west. There are also three isolated wetlands on the site, each less than a half-acre in size.

9. The wetland system adjacent to the Project site flows to the Guana River. The Guana River is a freshwater, Class III waterbody. It is an Outstanding Florida Water, but has been designated by the Department of Environmental Protection as impaired for nutrients.

10. The site is not used by threatened or endangered species for feeding, nesting, or breeding.

The Project

11. The proposed Project is a 22-lot, single-family subdivision.

12. The proposed surface water management system for the Project includes curb and gutter paved roadways, storm inlets, concrete pipes, vegetated natural buffers, treatment swales, and a wet detention stormwater pond.

13. The wet detention stormwater pond would discharge into adjacent wetlands that flow to the Guana River.

Wetlands

14. The point of discharge from the Project's stormwater management system is not in the designated Outstanding Florida Water.

15. Applicant proposes to fill the four ponds and the three isolated wetlands. Applicant also proposes to fill 0.28 acres of the larger wetland.

16. The Project includes a number of upland buffers that are a minimum of 15 feet in width and average of 25 feet in width. These buffers are intended to prevent potential adverse secondary impacts to adjacent wetlands.

17. All wetland impacts and mitigation were assessed using the Uniform Mitigation Assessment Method (UMAM) in Florida Administrative Code Rule 62-345. The UMAM assessment takes into consideration the location and landscape support, water environment, and community structure of the wetlands to be impacted. The District also considers the condition, hydrologic connection, uniqueness, location, and the fish and wildlife utilization of the wetlands and other surface waters.

18. The District did not require mitigation for filling the artificial ponds. The District also did not require mitigation for filling the isolated wetlands because each is less than a half-acre in size.

19. As mitigation for filling 0.28 acres of the larger wetland, Applicant would purchase 0.25 mitigation bank credits from the St. Marks Pond Mitigation Bank.

20. The St. Marks Pond Mitigation Bank is located in the same drainage basin as the wetland area that would be filled.

21. The District determined that purchasing the mitigation bank credits would offset the functional loss associated with filling part of the wetland.

22. Two areas on the site where no upland buffers are proposed were assessed for secondary impacts to wetlands in the UMAM evaluation.

23. The mitigation bank credits proposed for the Project would offset all of the adverse, direct, and secondary impacts to wetlands or surface waters associated with this Project.

24. Because direct and secondary impacts would be fully mitigated, the Project would not cause cumulative impacts.

Water Quantity

25. A majority of the Project's stormwater runoff would be conveyed to the wet detention pond. The wet detention pond provides water quantity protection by attenuating the post-development peak rate of discharge.

26. Applicant modeled the pre-development peak rate of discharge and the post-development peak rate of discharge. The modeling indicated that the post-development peak rate of

discharge will not exceed the pre-development peak rate of discharge for the 25-year, 24-hour storm event.

27. Section 3.3 of the Applicant's Handbook, Volume II, prohibits a reduction in the 10-year or 100-year floodplain for projects with an upstream drainage basin of five square miles or greater. The proposed Project has an upstream drainage basin of 4.6 square miles, so this criterion is not applicable.

28. Applicant showed the Project would increase offsite flood elevations by only 0.01 feet, which is negligible.

29. The Project would not cause adverse water quantity impacts to receiving waters or adjacent lands.

Water Quality

30. Water quality would be managed in the Project through a combination of wet detention pond, swales, and vegetative natural buffers ("VNBs").

31. The wet detention pond would treat a majority of the runoff from the Project.

32. Section 8 of the Applicant's Handbook, Volume II, contains presumptive criteria for the design of a wet detention pond. The proposed wet detention pond meets the presumptive criteria. Therefore, the detention pond is presumed to provide reasonable assurance that the water quality of receiving waters will be protected.

33. Applicant is proposing to construct swales at the back of Lots 20, 21, and 22 to treat runoff by infiltration. Section 9 of the Applicant's Handbook, Volume II, contains presumptive criteria for swale system design and performance. The Project meets the presumptive criteria for swales.

34. Applicant is proposing VNBs on Lots 1 through 14. The use of VNBs is a commonly-used best management practice accepted by the District for treating stormwater runoff. Like swales, VNBs treat runoff by infiltration.

35. Stormwater runoff from the backyards of Lots 1 through 14 would drain to the VNBs. On some of these lots, stormwater runoff from the front yards, side yards, and rooftops would also drain to the VNBs. The lots would be graded so that runoff would sheet flow to the VNBs to maximize their treatment function.

36. The VNBs would have native soils and plants. The VNBs would have Type A soils, which are well-drained soils that provide the highest rate of infiltration and the most permeability.

37. Petitioner contends that, because soil borings were not taken at the location of the VNBs, reasonable assurance was not provided that the VNBs would function as proposed. However, Petitioner did not show that the soils at the VNB locations were unsuitable soils. In addition, Applicant agreed to use Type A

soils in the VNBs. Therefore, reasonable assurance that the VNBs would have suitable soils was provided by Applicant.

38. Petitioner referred to a draft rule to support her contention that the proposed VNBs are not properly designed, but the draft rule has no controlling effect and is hearsay.

39. The Applicant's Handbook does not contain presumptive criteria for VNBs. Applicant demonstrated that the VNBs would infiltrate 80 percent of the runoff from a three-year, one-hour storm event, which is the same treatment efficiency the District requires when swales are used. Reasonable assurance was provided that the VNBs would function as proposed.

40. Because the Project would discharge to wetlands that flow to the Guana River, a waterbody impaired by nutrients, section 2.2 of the Applicant's Handbook, Volume II, requires Applicant to demonstrate there would be a net improvement in water quality with respect to nutrients.

41. Applicant performed a pollutant loading analysis using the BMPTRAINS model. The BMPTRAINS model is a generally-accepted tool used by stormwater engineers for this purpose.

42. The BMPTRAINS model incorporates the information about the pre- and post-development conditions associated with land use and impervious area. The model accounts for site-specific conditions, including the elevation of the groundwater table and storage capacity of the soil. The design of the surface water

management system is then incorporated into the model to estimate the pollutant removal efficiency and estimate the average annual pollutant load that will leave the site.

43. Applicant's BMPTRAINS modeling indicated that the average annual post-development loading for total nitrogen and total phosphorus would be substantially less than the pre-development loading for those nutrients. Therefore, Applicant demonstrated the Project would result in a net improvement.

Operation & Maintenance

44. The Ponte Vedra Beach Preserve Homeowners Association would be the entity responsible for operation and maintenance of the stormwater management system.

45. The wet detention pond, swales, and VNBs would be located within an easement and maintained by the homeowner's association.

46. Applicant and the Ponte Vedra Beach Preserve Homeowners Association have the ability to accept responsibility for the operation and maintenance of the Project.

Public Interest

47. An applicant for an ERP must demonstrate that a proposed project affecting wetlands and other surface waters would not be contrary to the public interest. This determination is made by balancing seven factors found in section 10.2.3(a) through (g) of the Applicant's Handbook, Volume I.

48. Public interest factor (a) is whether the regulated activity will adversely affect public health, safety, or welfare, or the property of others. There is no aspect of the Project that would affect public health, safety, or welfare, except the potential for flooding. Reasonable assurance was provided by Applicant that the Project would not cause flooding.

49. Factor (b) is whether the regulated activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species or their habitats. The mitigation bank credits offset all of the potential adverse impacts that the proposed project would have on the conservation of fish and wildlife.

50. Factor (c) is whether the regulated activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling. The parties stipulated that the Project will not adversely affect navigation or cause harmful erosion or shoaling. The record evidence shows the Project will not adversely affect the flow of water.

51. Factor (d) is whether the regulated activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity. The Project would not affect fishing or recreational values in the vicinity. The mitigation bank credits offset all of the potential adverse

impacts the proposed project would have on marine productivity in the vicinity.

52. Factor (e) is whether the regulated activity will be of a temporary or permanent nature. The activities are of a permanent nature. The mitigation is also permanent.

53. Factor (f) is whether the regulated activity will adversely affect or will enhance significant historical and archaeological resources. The Project will have no effect on historical and archaeological resources.

54. Factor (g) is the current condition and relative value of functions being performed by areas affected by the proposed regulated activity. The relatively small loss of functional value would be offset by the proposed mitigation.

55. Considering and balancing these seven factors, the Project would not be contrary to the public interest.

CONCLUSIONS OF LAW

Standing

56. In order to have standing, a petitioner must have a substantial interest that would be affected by the proposed agency action. See § 120.52(13)(b), Fla. Stat. Standing requires a petitioner to show that he or she will suffer an injury in fact which is of sufficient immediacy, and the injury is of a type or nature which the proceeding is designed to

protect. See Agrico Chem. Co. v. Dep't of Env'tl. Reg., 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

57. The preponderance of the evidence shows the Project would not affect Petitioner's substantial interest in recreating on the Guana River and surrounding area. However, Petitioner presented evidence to show her interest could be affected, which is sufficient to establish her standing in this proceeding. See St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051, 1054 (Fla. 5th DCA 2011).

Burden and Standard of Proof

58. The ERP was issued under chapter 373. A petitioner challenging a permit issued under chapter 373 has the burden of ultimate persuasion after the applicant has presented its *prima facie* case for entitlement to the permit by entering into evidence the application, relevant material supporting the application, and the agency staff report or notice of intent to issue the permit. See § 120.569(2)(p), Fla. Stat. Applicant presented a *prima facie* case for entitlement to the ERP. Therefore, the burden of ultimate persuasion was on Petitioner to prove her case in opposition to the permit.

59. After a permit applicant has met its *prima facie* burden, a challenger cannot meet its burden of ultimate persuasion merely by showing that the Applicant's information does not preclude the possibility of contrary physical factors or effects. The

challenger must prove the existence of the contrary factors or prove that the contrary effects are more likely.

60. In this case, for example, it was not enough for Petitioner to offer evidence that Applicant's soil borings were not adequate to preclude the possibility that the soils in the VNBs and swales were not suitable soils. Petitioner had to prove the soils were not suitable. She failed to do so.

61. The standard of proof is preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

62. The conditions for issuance of an ERP are contained in rule 62-330.301, rule 62-330.302, and the Applicant's Handbook. To demonstrate entitlement to the ERP, Applicant must provide reasonable assurance that the Project will meet the applicable criteria in these rules.

63. The term "reasonable assurance" means a demonstration that there is a substantial likelihood of compliance with standards. See Metro. Dade Cnty. v. Coscan Fla., Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992). It does not mean absolute guarantees.

64. Rule 62-330.301(1)(a) requires that construction, operation, and maintenance of the Project will not cause adverse water quantity impacts to receiving waters and adjacent lands. The preponderance of the evidence shows compliance with this requirement.

65. Rule 62-330.301(1)(b) requires that construction, operation, and maintenance of the Project will not cause adverse flooding to on-site or off-site property. The preponderance of the evidence shows compliance with this requirement.

66. Rule 62-330.301(1)(c) requires that construction, operation, and maintenance of the Project will not cause adverse impacts to existing surface water storage and conveyance capabilities. The preponderance of the evidence shows compliance with this requirement.

67. Rule 62-330.301(1)(d) requires that the construction, operation, and maintenance of the Project will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters. The preponderance of the evidence shows compliance with this requirement.

68. Rule 62-330.301(1)(e) requires that the construction, operation, and maintenance of the Project will not adversely affect the quality of receiving waters such that the state water quality standards set forth in that rule will be violated. The absence of presumptive criteria specifically for VNBs does not prevent an analysis and determination, using accepted scientific and engineering methods, whether water quality will be adversely affected. The preponderance of the evidence shows compliance with this requirement.

69. Rule 62-330.301(1)(f) requires that construction, operation, and maintenance of the Project will not cause adverse secondary impacts to the water resources. The preponderance of the evidence shows compliance with this requirement.

70. Rule 62-330.301(1)(i) requires that construction, operation, and maintenance of the Project will be capable, based on generally accepted engineering and scientific principles, of performing and functioning as proposed. The preponderance of the evidence shows compliance with this requirement.

71. Rule 62-330.301(1)(j) requires that construction, operation, and maintenance of the Project will be conducted by a person with the financial, legal, and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued. The preponderance of the evidence shows compliance with this requirement.

72. Rule 62-330.302(1)(a) requires a demonstration that the Project is not contrary to the public interest. Applicant made this demonstration.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the St. Johns River Water Management District enter a final order approving the issuance of Environmental Resource Permit No. IND-109-143282-1 to 1044PVB, LLC, with the conditions set forth in the Technical Staff Report dated April 11, 2016.

DONE AND ENTERED this 16th day of June, 2016, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of June, 2016.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

INDIVIDUAL ENVIRONMENTAL RESOURCE PERMIT TECHNICAL STAFF REPORT
11-Apr-2016
APPLICATION #: 143282-1

Applicant: Margaret Jenness
1044PVB LLC
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(904) 996-2485

Owner: Margaret Jenness
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Consultant: Patrick Pierce
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10060 Skinner Lake Dr
Jacksonville, FL 32246-7471
(904) 265-3030

Project Name: Ponte Vedra Beach Preserve
Acres Owned: 25.68
Project Acreage: 17.13
County: St. Johns
STR:

Section(s):	Township(s):	Range(s):
11,45	4S	29E

Receiving Water Body:

Name	Class
Guana River	III Fresh, IW

Authority: 62-330.020 (2)(d), 62-330.020 (2)(b), 62-330.020 (2)(a), 62-330.020 (2)(c)
Existing Land Use: Residential - Low Density(1100), Lakes(5200), Wetland Forested Mixed(6300), Temperate Hardwoods(4250)
Mitigation Drainage Basin: Tolomato River & Intercoastal Nested
Special Regulatory Basin:
Final O&M Entity: Ponte Vedra Beach Preserve Homeowners Association, Inc.
ERP Conservation Yes

Easements/Restrictions:**Interested Parties:** Yes**Objectors:** Yes**Authorization Statement:**

Construction of a Surface Water Management System with stormwater treatment by Swales, Vegetative Natural Buffer, and Wet Detention for Ponte Vedra Beach Preserve, a 17.13-acre project to be constructed as per plans received by the District on December 1, 2015 and as amended by sheets 6, 7A, 7B, 8A, 8B, and 16 received by the District on April 5, 2016.

Recommendation: Approval**Reviewers:** Cammie Dewey; Rocky Thompson; Dale Eisman**Staff Comments**

Project Applicant and Sufficient Real Property Interest: *Under rule 62-330.060, F.A.C., and subsection 4.2.3(d), ERP A.H., Volume I, a permit applicant must certify that it has sufficient real property interest over the land upon which the activities subject to the application will be conducted.*

The permit applicant is the record title holder over the property on which the proposed activities will be conducted.

Project Location and Brief Description:

The project site is located on the west side of Ponte Vedra Boulevard just south of Isle Way Lane in St. Johns County, Florida. The surface water management system consists of 22 single-family residential lots, curb and gutter paved roadways, storm inlets, concrete pipes, vegetated natural buffers, treatment swales, and a single wet detention stormwater pond. The pond discharges into an adjacent wetland system that flows west to the Guana River, a nutrient impaired, Class III freshwater receiving water.

Objectors:

The District received numerous objection letters and letters of concern related to this application. The reasons for objections varied and included several issues not within the District's regulatory authority. On October 30, 2015, staff e-mailed a response to the objectors. This response stated the status of the application and clarified the District's regulatory authority over flooding/drainage, wetland/surface water impacts and mitigation, and runoff pollutants. The e-mail also invited objectors to contact staff directly to discuss any of their concerns.

On December 18, 2015, staff met at the Jacksonville Service Center with an objector to hear their concerns and answer questions about the project. On December 21, 2015, staff sent a follow-up email with specific responses to questions that were not completely addressed at the meeting.

Permitting History:

No previous District permits have been issued for this site.

Financial Assurance Mechanism:

Not applicable.

Off-Site Mitigation:

The applicant will provide 0.25 UMAM freshwater forested credits in Basin 6 from St. Marks Pond Mitigation Bank.

Engineering**Description of Surface Water Management System:**

The surface water management system consists of 22 single-family residential lots, curb and gutter paved roadways, storm inlets, concrete pipes, vegetated natural buffers, treatment swales, and a single wet detention stormwater pond. The pond discharges into an adjacent wetland system that flows west to the Guana River, a nutrient impaired, Class III freshwater receiving water. The stormwater management facilities are designed to accommodate the ultimate single-family residential build out of the site.

Water Quality:

The applicant has provided drainage calculations that demonstrate the wet detention pond, swales, and vegetated natural buffers would provide stormwater treatment in accordance with District criteria. The stormwater management facilities are designed to accommodate the ultimate single-family residential build out of the site. Vegetated natural buffers are proposed at the rear of lots where conveyance of stormwater runoff to the wet detention pond is not practical due to grading constraints. Since the wet detention pond is deeper than 12 feet, the applicant has provided anoxic depth calculations to demonstrate the required permanent pool volume is provided within the aerobic depth zone. The permanent pool volume of the wet pond is based on a 21-day residence time so that no littoral planting is required. The applicant submitted detailed erosion and sediment control plans to prevent the discharge of turbid waters to adjacent wetlands and receiving waters. The applicant's geotechnical engineer recommended a groundwater cut-off wall along the southeast portion of the wet detention pond to prevent the pond from lowering the groundwater table in adjacent wetlands. The applicant has proposed over treatment of collected stormwater runoff in order to compensate for green space areas where conveyance to the wet detention pond for treatment is not practical due to grading constraints.

The Guana River is the ultimate receiving waterbody for this project and is classified as an impaired waterbody for nutrients. In conformance with state water quality standards for nutrients imposed on projects discharging into impaired waterbodies, the applicant submitted detailed calculations to demonstrate a net benefit in the post-development phosphorus and nitrogen loading as compared to the pre-development condition. The submitted calculations demonstrate this project will not cause or contribute additional phosphorus and nitrogen loading into the Guana River.

Flood Protection:

The wet detention pond provides water quantity protection by post-development peak discharge rate attenuation. According to the District's presumptive water quantity criteria in Section 3.2.1, ERP Applicant's Handbook, Volume II, no adverse impacts to water quantity is presumed where, as here, the post-development peak discharge rate does not exceed the pre-development peak discharge rate for the 25-year, 24-hour design

storm event. District floodways and floodplain storage criteria contained in Section 3.3.2, ERP Applicant's Handbook, Volume II is not applicable to this project since the contributing drainage basin upstream of the project is less than five square miles, Section 3.3.4, ERP Applicant's Handbook, Volume II.

Special Basin Criteria:

Not applicable.

Operation and Maintenance:

The applicant has proposed that the project will be operated and maintained by a homeowners' association identified as the Ponte Vedra Beach Preserve Homeowners Association, Inc., and has provided draft Articles of Incorporation and draft Declaration of Covenants and Restrictions that meet the requirements of section 12.3.3. ERP, A.H., Volume I.

Environmental

Site Description:

The project site consists of residential uplands (110) and temperate hardwood uplands (425) with 4.41 acres of wetlands and other surface waters located throughout the site. A 3.49 acre mixed forested wetland (630) is located along the southern boundary of the site and extends northward through the site. This wetland continues offsite to the south and west. There are also three isolated mixed forested wetlands (630) located on the site. Two of the isolated wetlands are 0.17 acres and are located along the northern border of the site. The third wetland is 0.04 acres and located in the northwestern corner of the project site. In addition, four man-made upland cut ponds (520) are scattered through out the site and range in size from 0.04 to 0.24 acres.

Impacts: *Subsection 10.2.2, ERP A.H. Volume I, states that an applicant must provide reasonable assurances that a regulated activity will not impact the values of wetland and other surface water functions so as to cause adverse impacts to: (a) the abundance and diversity of fish, wildlife and listed species; and (b) the habitat of fish, wildlife and listed species.*

The applicant has proposed to fill the four upland cut ponds that total 0.54 acres, as well as the three isolated wetlands. In addition, the applicant has proposed to fill 0.28 acres of the larger wetland. All wetlands, impacts, and mitigation were assessed using the Uniform Mitigation Assessment Method (UMAM), subsection 62-345, F.A.C.

Secondary impacts: *Subsection 10.2.7, ERP A.H. Volume I, contains a four-part criterion that addresses additional impacts that may be caused by a proposed activity: (a) adverse impacts to wetland (and other surface water) functions and water quality violations that may result from the intended or reasonably expected uses of a proposed activity; (b) adverse impacts to the upland nesting habitat of bald eagles and aquatic or wetland dependent listed animal species; (c) impacts to significant historical and archaeological resources that are very closely linked and causally related to any proposed dredging or filling of wetlands or other surface waters; and (d) adverse wetland (and other surface) impacts and water quality violations that may be caused by future phases of the project or by activities that are very closely linked and causally related to the project.*

The applicant has proposed upland buffers where possible to prevent adverse secondary impacts. These buffers will be placed under a conservation easement consistent with section 704.06, F.S. In the areas where upland buffers are not provided, the adverse secondary impacts have been accounted for in the proposed mitigation plan. The permitted activity will not result in impacts to the nesting habitat of listed species or impacts to historical or archaeological resources. There are no future phases to this project.

Elimination/Reduction of Impacts: *Pursuant to subsection 10.2.1.1, ERP A.H. Volume I, the applicant must implement practicable design modifications to reduce or eliminate adverse impacts to wetlands and other surface waters. A proposed modification that is not technically capable of being completed, is not economically viable, or that adversely affects public safety through endangerment of lives or property is not considered "practicable". Alternatively, an applicant may meet this criterion by demonstrating compliance with section 10.2.1.2.a. or 10.2.1.2.b.*

The applicant has proposed to purchase credits from the St. Marks Pond Mitigation Bank. The mitigation bank has been determined by the District to be regionally significant and therefore consistent with 12.2.1.2(b) of the Applicant's Handbook.

Mitigation:

The applicant has proposed to mitigate for the impacts to the larger wetland system by purchasing mitigation bank credits from the St. Marks Pond Mitigation Bank. No mitigation is proposed or required for the impacts to the isolated wetlands less than 0.5 acres or the made ponds pursuant to subsections 10.2.2.1 and 10.2.2.2 of the Applicant's Handbook, respectively.

Cumulative Impacts: *Subsection 10.2.8, ERP A.H. Volume I, requires applicants to provide reasonable assurances that their projects will not cause unacceptable cumulative impacts upon wetlands and other surface waters within the same drainage basin as the project for which a permit is sought. This analysis considers past, present, and likely future similar impacts and assumes that reasonably expected future applications with like impacts will be sought, thus necessitating equitable distribution of acceptable impacts among future applications. Under section 10.2.8, when an applicant proposes mitigation that offsets a project's adverse impacts within the same basin as the impacts, the project does not cause unacceptable cumulative impacts.*

District staff has determined that the proposed mitigation located within basin 6 offsets the proposed impacts and is within the same basin as the impacts. This project is consistent with subsection 10.2.8, ERP A.H. Volume I.

Wetland Summary Table

Ponte Vedra Beach Preserve Residential Single Family

	<u>Acres</u>
Total Surface Water, Upland RHPZ and Wetlands in Project	
Wetlands	3.870
OSW	0.540
Upland RHPZ	0.000

	Total	4.410
Impacts that Require Mitigation		
Dredged or Filled		0.280
Other		1.410
	Total	1.690
Impacts that Require No Mitigation		
Dredged or Filled		0.240
Dredged or Filled		0.210
Dredged or Filled		0.050
Dredged or Filled		0.040
Dredged or Filled		0.170
Dredged or Filled		0.170
Dredged or Filled		0.040
	Total	0.920
Mitigation		
On-Site		
Wetland Preservation		0.000
	Total	0.000
Off-Site		
	Total	0.000
Other		
	Reserved Credits	
Mitigation Bank Credits (St. Marks Pond		0.250
Mitigation Bank - UMAM,6,Forested		
Freshwater)		

Conclusion:

The applicant has provided reasonable assurance that the proposed project meets the conditions for issuance of permits specified in rules 62-330.301 and 62-330.302, F.A.C.

Conditions

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.
2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the District staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.

3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation June 2007), and the Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), which are both incorporated by reference in subparagraph 62-330.050(9)(b)5, F.A.C., unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.
4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the District a fully executed Form 62-330.350(1), "Construction Commencement Notice,"[10-1-13], incorporated by reference herein (<http://www.flrules.org/Gateway/reference.asp?No=Ref-02505>), indicating the expected start and completion dates. A copy of this form may be obtained from the District, as described in subsection 62-330.010(5), F.A.C. If available, an District website that fulfills this notification requirement may be used in lieu of the form.
5. Unless the permit is transferred under Rule 62-330.340, F.A.C., or transferred to an operating entity under Rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms and conditions of the permit for the life of the project or activity.
6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
 - a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex — "Construction Completion and Inspection Certification for Activities Associated With a Private Single-Family Dwelling Unit" [Form 62-330.310(3)]; or
 - b. For all other activities — "As-Built Certification and Request for Conversion to Operational Phase" [Form 62-330.310(1)].
 - c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.
7. If the final operation and maintenance entity is a third party:
 - a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as-built certification, whichever comes first, the permittee shall submit, as applicable, a copy of the operation

and maintenance documents (see sections 12.3 thru 12.3.3 of Volume I) as filed with the Department of State, Division of Corporations and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.

b. Within 30 days of submittal of the as- built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.

8. The permittee shall notify the District in writing of changes required by any other regulatory District that require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.

9. This permit does not:

a. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, F.A.C.;

b. Convey to the permittee or create in the permittee any interest in real property;

c. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or

d. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.

10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.

11. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.

12. The permittee shall notify the District in writing:

a. Immediately if any previously submitted information is discovered to be inaccurate; and

b. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with Rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.

13. Upon reasonable notice to the permittee, District staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.
14. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, work involving subsurface disturbance in the immediate vicinity of such discoveries shall cease. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Such subsurface work shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and notification shall be provided in accordance with Section 872.05, F.S.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.
16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.
17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the District will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.
18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with Rule 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.
19. This permit for construction will expire five years from the date of issuance.

20. At a minimum, all retention and detention storage areas must be excavated to rough grade prior to building construction or placement of impervious surface within the area to be served by those facilities. To prevent reduction in storage volume and percolation rates, all accumulated sediment must be removed from the storage area prior to final grading and stabilization.
21. The operation and maintenance entity shall inspect the stormwater or surface water management system once within two years after the completion of construction and every two years thereafter to determine if the system is functioning as designed and permitted. The operation and maintenance entity must maintain a record of each required inspection, including the date of the inspection, the name and contact information of the inspector, and whether the system was functioning as designed and permitted, and make such record available for inspection upon request by the District during normal business hours. If at any time the system is not functioning as designed and permitted, then within 30 days the entity shall submit a report electronically or in writing to the District using Form 62-330.311(1), "Operation and Maintenance Inspection Certification," describing the remedial actions taken to resolve the failure or deviation.
22. Wetland impacts and mitigation shall be implemented as per plans received by the District on September 1, 2015, and as modified by the submittal received on October 29, 2015.
23. Before the start of any construction, the permittee must provide the District with documentation demonstrating that 0.25 UMAM mitigation credits in Basin 6 have been debited from the St. Marks Pond Mitigation Bank ledger.
24. In the event that the permittee does not successfully complete the transaction to obtain 0.25 UMAM mitigation credits in Basin 6 from St. Marks Pond Mitigation Bank, the permittee must obtain a permit modification to provide alternative mitigation.
25. Deed of Conservation Easement

This permit requires the recording of a conservation easement. Within 30 days of recording, the permittee shall provide the District with: (a) the original recorded easement (including exhibits) showing the date it was recorded and the official records book and page number, (b) a copy of the recorded plat (if applicable), (c) a surveyor's sketch of the easement area plotted on the appropriate USGS topographic map, and (d) the original recorded consent and joinder(s) of mortgagee (if applicable). Before recording them, the permittee shall ensure that these documents are acceptable to the District as described below.

Description of Conservation Easement Area.

The permittee shall provide to the District for review and written approval a copy of: (a) the preliminary plat showing the area to be encumbered by the conservation easement, or (b) a surveyor's sketch and legal description of the area to be placed under the conservation easement, per the approved mitigation

plan, at least 45 days before (1) dredging, filling, or clearing any wetland or surface water for which mitigation is required; (2) clearing any upland within a Riparian Habitat Protection Zone for which mitigation is required; (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, whichever occurs first.

If the impacts to an upland within a Riparian Habitat Protection Zone or to a wetland or surface water for which mitigation is required will occur in discrete phases, the areas to be preserved to offset such impacts may be placed under conservation easement in phases such that impacts are offset during each phase. Such phasing of preservation shall only occur if it has been proposed in the mitigation plan and approved by the permit, or if it is approved in writing by the District. A surveyor's sketch and legal description of the area to be placed under conservation easement during each phase must be submitted in accordance with the previous paragraph.

Recording of Conservation Easement.

Before (1) dredging, filling, or clearing any wetland or surface water for which mitigation is required, (2) clearing any upland within a Riparian Habitat Protection Zone for which mitigation is required, (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, whichever occurs first, the permittee shall record a conservation easement. The conservation easement shall include restrictions on the real property pursuant to section 704.06, Florida Statutes, and be consistent with section 10.3.8, ERP Applicant's Handbook, Volume I (October 1, 2013) and Fla. Admin. Code R. 62-330.301(6).

The conservation easement shall be in the form approved in writing by the District and, if no plat has been submitted, the easement shall include the approved legal description and surveyor's sketch. If the District does not provide written comments on the preliminary plat or surveyor's sketch and legal description within 45 days of receipt, then the permittee may record the conservation easement with the legal description and surveyor's sketch or plat reference previously submitted. If the District provides written disapproval of the preliminary plat or surveyor's sketch and legal description, the permittee shall, within ten (10) days of receipt of the disapproval, correct all errors with the conservation easement, including the preliminary plat or legal description and surveyor's sketch, and record the conservation easement. Pursuant to section 704.06, Florida Statutes, the conservation easement shall prohibit all construction, including clearing, dredging, or filling, except that which is specifically authorized by this permit, within the mitigation areas delineated on the final plans and/or mitigation proposal approved by the District.

The easement may not be amended without written District approval.

Additional Documents Required.

The permittee shall ensure that the conservation easement identifies, and is executed by, the correct grantor, who must hold sufficient record title to the land encumbered by the easement. If the easement's grantor is a partnership, the

partnership shall provide to the District a partnership affidavit stating that the person executing the conservation easement has the legal authority to convey an interest in the partnership land. If there exist any mortgages on the land, the permittee shall also have each mortgagee execute a consent and joinder of mortgagee subordinating the mortgage to the conservation easement. The consent and joinder of the mortgagee shall be recorded simultaneously with the conservation easement in the public records of the county where the land is located. Within 30 days of recording, the permittee shall provide the District with: (a) the original recorded easement (including exhibits) showing the date it was recorded and the official records book and page number, (b) a copy of the recorded plat (if applicable), (c) a surveyor's sketch of the easement area plotted on the appropriate USGS topographic map, and (d) the original recorded consent and joinder(s) of mortgagee (if applicable).

26. The Surface Water Management System shall be constructed and operated per the plans received by the District on December 1, 2015 and as amended by sheets 6, 7A, 7B, 8A, 8B, and 16 received by the District on April 5, 2016.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

NANCY CONDRON,

Petitioner,

v.

DOAH Case No. 16-0806

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT
and 1044PVB, LLC,

SJRWMD F.O.R. No. 2016-04

Respondents.

FINAL ORDER NOTICE OF RIGHTS

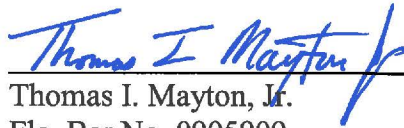
1. Pursuant to Section 120.569, Florida Statutes, the purpose of this notice is to inform each party's attorney of record that judicial review of the Final Order in this case is available under Section 120.68, Florida Statutes.

2. Pursuant to Section 120.68, Florida Statutes, a party who is adversely affected by the Final Order may seek review in the appellate district where the District maintains its headquarters or where a party resides or as otherwise provided by law by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days of the rendering of the Final Order. The District's headquarters are in Palatka, Florida. In this case, the Final Order was rendered on July 25, 2016.

3. Failure to observe the relevant time frames for filing a petition for judicial review will result in waiver of that right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Final Order in this case and this Final Order Notice of Rights have been sent by e-mail and United States Certified Mail to Jane West, Esquire (jane@janewestlaw.com), 201 Owens Avenue, Suite A, St. Augustine, FL 32080, *Attorney for Petitioner Nancy Condrón*; Gary Hunter, Esquire (ghunter@hgslaw.com), Eric T. Olsen, Esquire (eolsen@hgslaw.com), and Amelia Savage, Esquire (asavage@hgslaw.com), 119 S. Monroe Street, Suite 300, Tallahassee, FL 32301, *Attorneys for Applicant, 1044 PVB, LLC*; and by e-mail and hand delivery to Karen C. Ferguson, Esquire (kferguson@sjrwmd.com), 4049 Reid Street, Palatka, FL 32177, *Attorney for St. Johns River Water Management District*, on July 25, 2016.



Thomas I. Mayton, Jr.

Fla. Bar No. 0905909

Office of General Counsel

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