ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

IN RE:

COY A. KOONTZ MANAGEMENT AND STORAGE OF SURFACE WATERS PERMIT APPLICATION NO. 4-095-0474A ORANGE COUNTY, FLORIDA	F.O.R. 94-1499

FINAL ORDER

THIS MATTER came before the Governing Board of the St. Johns River Water Management District ("District") on May 11, 1994. The Governing Board, having been fully advised of the facts by the applicant and District staff, hereby enters the following findings of fact and conclusions of law and order.

FINDINGS OF FACT

1. Applicant, Coy A. Koontz, ("Koontz"), applied to the District for a management and storage of surface waters ("MSSW") permit under Chapter 40C-4, Fla. Admin. Code, to authorize the construction and operation of a stormwater and surface water management system ("system") on approximately 14.9 acres of property. The proposed system includes an unspecified commercial development and a dry-bottom retention/detention basin with a side-bank filterdrain on 3.7 acres of fill.

2. The Koontz property is located within the Econlockhatchee River Hydrologic Basin in Section 23, Township 22 South, Range 31 East in eastern Orange County, Florida. More particularly, the property is located south of State Road ("S.R.") 50 just east of

the Eastern Extension of the East-West Expressway.

3. The property lies almost entirely within the Riparian Habitat Protection Zone ("RHPZ") of the Econlockhatchee River Hydrologic Basin designated by District rules 40C-4.041(2)(b)6. and 40C-41.063(5)(d), Fla. Admin. Code. The property contains approximately 13.2 acres of uplands and wetlands located within the RHPZ. Rule 40C-41.063(5)(d), Fla. Admin. Code. The remaining 1.7 acres of forested uplands on the property lie outside of the RHPZ.

4. The forested upland canopy on the property consists of predominantly long leaf pine with a saw palmetto understory. A small portion of the uplands within the RHPZ (approximately 0.5 acre) is maintained as a grass right-of-way for the existing paved access road. The wetland component of the property includes a tributary to the Econlockhatchee River. The onsite wetland contains a diverse plant community: approximately 10.9 acres of mature forested wetlands and 0.9 acres of herbaceous wetlands. The higher elevations of the wetlands consist of a seepage slope zone vegetated with loblolly bay and pond pine. The understory primarily contains saw palmetto. As the elevation decreases, a herbaceous wetland is maintained within a powerline easement. Historically, the area within the easement was deforested. The plant community within the easement includes red root, rush fuirena, guinea grass, saw grass and red top panicum. A mixed hardwood system with a mature canopy of loblolly bay, red maple, southern magnolia, laurel oak, water oak and dahoon holly is found at the lowest elevation of the wetland.

5. The uplands and wetlands on the Koontz property are of high quality.

6. Koontz's property provides a diversity of habitat and food sources for a variety of wildlife species and serves as an important refuge for a variety of aquatic or wetland dependent wildlife species within the Econlockhatchee River Hydrologic Basin. The resting, breeding, foraging and nesting requirements of many aquatic or wetland dependent species, as well as other wildlife, are provided by the wetland systems.

7. Koontz's proposed system includes the construction of an unspecified commercial development building site, parking lot and dry-bottom retention/detention basin on 3.7 acres of uplands and wetlands within the RHPZ. The entire seepage slope zone and herbaceous wetland zone, a narrow strip of the mixed hardwood zone, and a portion of the longleaf pine flatwoods will be cleared and filled for development.

8. Koontz's proposed project will displace wildlife habitat and cause adverse impacts to fish and wildlife, including aquatic and wetland dependent species.

9. Koontz proposed to place the remaining undeveloped 9.2 acres of RHPZ uplands and wetlands and 1.2 acres of non-RHPZ uplands into a conservation easement as mitigation to offset the adverse impacts on the wildlife functions provided by the uplands and wetlands within the RHPZ.

10. The District suggested several alternative approaches to Koontz to reduce impacts of the proposed project impacts to such an

extent that the fish and wildlife RHPZ impacts could be eliminated or sufficiently reduced. Therefore, if the fish and wildlife RHPZ impacts are eliminated or sufficiently reduced with appropriate mitigation the proposed project may be permitted under District rules, provided Koontz's proposed plan also complied with the relevant water quantity and water quality criteria. A possible design approach offered by the District, which would reduce the clearing or filling within the RHPZ, involved the construction of a subsurface stormwater management system under the project site thereby eliminating the construction of the dry-bottom retention/detention basin. The District also suggested that Koontz reduce wetland impacts through elimination of side-slope areas and replacing these areas with stem walls.

11. Prior to the Governing Board's consideration of the permit application on May 11, 1994, Koontz did not contest the viability of the alternative approaches to achieving a permittable project from the District, and, without explanation, declined to accept the suggested alternative approaches.

12. At the Governing Board hearing, Koontz's agent, Mr. William Fogle argued that the subsurface stormwater treatment system alternative would be too costly. However, Mr. Fogle did not provide any evidence or analysis to substantiate this claim.

13. The District also suggested to Koontz several off-site alternatives to onsite mitigation, including restoration, enhancement and preservation. In the District's Technical Staff Report provided to Koontz on May 9, 1994, the District discussed

two off-site mitigation enhancement options available on District-owned properties (the Hal Scott Preserve and the Demetree Property) within the Econlockhatchee River Hydrologic Basin.

14. Within wetlands in the Hal Scott Preserve existing road systems require the replacement of approximately fifteen inoperative or abandoned culverts. Replacement of the culverts would enhance the wetland functions to wildlife in the Preserve by maintaining the hydrologic capabilities of the wetland system and would eliminate any existing or potential sedimentation problems. Additionally, there are several ditches constructed in uplands within the Preserve that hydrologically and vegetatively connect the isolated wetlands to the Econlockhatchee River. These ditches have altered the natural hydroperiod of the wetlands. Plugging or eliminating the ditch systems would help rehydrate all or some of the affected wetland systems and, therefore, enhance the wetland functions to wildlife within the Econlockhatchee River Hydrologic Basin.

15. Another off-site mitigation enhancement option is available on the Demetree property. On this property a series of ranch ditches in uplands connect several wetlands. The ditch system discharges directly into the Econlockhatchee River and continues to alter the natural hydroperiod of the wetland systems. Plugging or eliminating the ditch system would aid in rehydrating all or some of the affected wetland systems, and therefore, enhance the wetland functions to wildlife.

16. Implementation of one or more of these off-site

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mitigation alternatives could offset the proposed impacts on the property and make the development, as proposed, permittable.

17. District staff indicated that if Koontz supplemented its on-site mitigation plan with an off-site enhancement mitigation option which included a total of at least 50 acres of wetland enhancement on either of the two suggested example sites, such an approach would sufficiently mitigate for the impacts proposed in Koontz's MSSW application. A combination of enhancement activities on both of these example sites totalling at least 50 acres of wetland enhancement would also be acceptable.

18. Equivalent off-site mitigation enhancement options on other properties within the basin could also be developed and proposed by Koontz.

19. As another option, the District suggested to Koontz that his commercial development be reduced to a scale that would enable Koontz's proposed onsite mitigation plan to sufficiently offset project impacts. Specifically, Koontz could develop 0.7 acre of wetlands and 0.3 acre of uplands within the RHPZ for commercial development fronting S.R. 50 with mitigation for the wetland and upland impacts in the form of a conservation easement or deed restriction consistent with Section 704.06, Florida Statutes, over the remaining undeveloped wetlands and uplands excluding the 0.4 acre portion of the paved road within the RHPZ and the 0.5 acre portion of right-of-way on the property.

20. Property with similar configuration characteristics, as well as similar or shared wetland systems, occur within the same

drainage basin as Koontz's property.

21. On September 8, 1993, the Governing Board approved a policy that requires a MSSW permit applicant to provide reasonable assurance that the proposed system will not result in cumulative unacceptable impacts upon water quality or wetland functions within the same drainage basin as the project.

CONCLUSIONS OF LAW

22. The District has jurisdiction over Koontz's proposed project. Section 373.069(2)(c), Fla. Stat.; Chapters 40C-4 and 40C-41, Fla. Admin. Code.

23. To obtain an MSSW permit from the District, it is Koontz's burden to provide reasonable assurance that the proposed system will comply with all conditions for issuance of the permit. Rules 40C-4.301(1)(a), 40C-4.301(2)(a), 40C-41.043(1), 40C-41.063(5)(c), 40C-41.063(5)(d)2., 40C-42.023, Fla. Admin. Code.

24. Koontz must provide reasonable assurance that wetland functions to fish and wildlife will not be adversely affected. Section 10.7.4 of the Applicant's Handbook, Management and Storage of Surface Waters; Rule 40C-4.301(2)(a)7., Fla. Admin. Code.

25. Koontz must provide reasonable assurance that construction or operation of the system will not adversely affect the abundance, diversity, food sources, or habitat of aquatic or wetland dependent species. Rule 40C-4.063(5)(d), Fla. Admin. Code.

26. Any of the following activities within the RHPZ are presumed to adversely affect the abundance, food sources or habitat

of aquatic or wetland dependent species provided by the RHPZ: construction of buildings, impoundments, roads, ditches, swales, and any land clearing which results in the creation of any system. Rule 40C-41.063(5)(c)(d)2., Fla. Admin. Code.

27. Koontz has failed to provide reasonable assurances that the construction of his proposed system within the RHPZ of the Econlockhatchee River Hydrologic Basin will not adversely affect the functions provided to aquatic or wetland dependent species by the RHPZ. District staff provided Koontz with alternative approaches to his mitigation plan which would have adequately mitigated the adverse fish and wildlife impacts of the proposed project, but Koontz rejected these. Likewise, Koontz has failed to provide reasonable assurances that the construction and operation of the proposed system will not adversely affect the functions provided to fish and wildlife by the wetlands adjacent to the tributary to the Econlockhatchee River. Consequently, the project does not comply with rules 40C-4.301(1)(a)10., 40C-4.301(2)(a)7., 40C-41.063(5)(d)1., and 40C-41.063(5)(d)5., Fla. Admin. Code.

28. Without mitigation, Koontz has failed to provide reasonable assurance that the system, when considered with activities regulated under Part IV of Chapter 373, Fla. Stat., which may reasonably be expected to be located within wetlands and are located within the same drainage basin and which have adverse impacts like those which will be caused by the proposed project will not result in a cumulative unacceptable impact upon wetland functions.

WHEREFORE, upon consideration, it is ORDERED that the MSSW Application No. 4-095-0474A of Coy A. Koontz is DENIED.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY: Patricia T. Harden
Patricia T. Harden, Chair

RENDERED this 9th day of June, 1994, in Palatka, Florida.

BY: Patricia C. Schultz
PATRICIA C. SCHULTZ
District Clerk

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