

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

IN RE:

COY A. KOONTZ
WETLAND RESOURCE
MANAGEMENT PERMIT APPLICATION
NO. 12-095-0109A
ORANGE COUNTY, FLORIDA

F.O.R. 94-1498

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 wetland resource management ("WRM") permit under Chapter 17-312, Fla. Admin. Code, to authorize the dredging and filling of 3.4 acres of wetlands for the construction of an unspecified commercial development and a dry-bottom retention/detention basin with a side-bank filterdrain on a 14.9 acres project site.

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 (the "Property"). 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)9. and 40C-41.063(5)(d)1., Fla. Admin. Code. The northernmost part of the Property consists of 1.3 acres of uplands; 0.5 acres of non-RHPZ uplands and 0.8 acre of RHPZ uplands. In the northernmost part of the Property a paved road accounts for 0.4 acre of RHPZ uplands and a grassy right-of-way accounts for 0.5 acre of non-RHPZ uplands. On the Property just to the south of the upland area is approximately 11.3 acres of forested and herbaceous wetland area bisected by a tributary to the Econlockhatchee River. In the southeastern corner of the property lies 1.8 acres of forested uplands: 0.6 acre is RHPZ upland and 1.2 acres is non-RHPZ upland.

4. The 2.2 acres of forested uplands are vegetated with mature canopy of long leaf pine with an understory of saw palmetto. The onsite wetlands consist of a diverse mixture of plant communities: 10.9 acres of mature forested wetlands and 0.9 acre of herbaceous wetlands. The wetlands at the higher elevations consist of a seepage slope area vegetated with pond pine and loblolly bay trees with a dense understory of saw palmetto. As the elevation decreases, a herbaceous wetland area is located within an existing power line easement. Historically, the wetland area within the power line easement was deforested. The power company maintains the wetland area within the power line easement as a herbaceous wetland. The plant community within the powerline

easement includes red root, rush fuirena, guinea grass, saw grass and red top opanicum. The wetlands located at the lowest elevation consist of a mixed hardwood system with a mature canopy of loblolly bay, red maple, southern magnolia, laurel oak, water oak, and dahoon holly.

5. The forested and herbaceous wetlands on the Property are of high quality.

6. The different wetland communities on the Property provide a diversity of habitat and food sources, and serve as an important refuge for a variety of wildlife species within this area of the Econlockhatchee River Hydrologic Basin. The resting, breeding, foraging and nesting requirements of many wildlife species are met in these wetlands.

7. Koontz's proposed project includes the construction of a commercial building site and dry-bottom retention/detention system. A total of 3.4 acres of wetlands consisting of the entire seepage slope zone and herbaceous wetland zone and a narrow strip of the mixed hardwood zone are proposed to be filled for the construction of a dry-bottom retention/detention basin and parking area for the commercial development.

8. Koontz's proposed development will displace wildlife habitat and cause adverse impacts to fish and other wildlife species.

9. Koontz proposed to place the remaining 9.2 acres of uplands and wetlands within the RHPZ and the 1.2 acres of uplands adjacent to the RHPZ in a conservation easement to offset the

proposed loss of functions currently provided by the 3.4 acres of wetlands to wildlife.

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

11. Prior to the Governing Board's consideration of the application on May 11, 1994, Koontz did not contest the practicability of the design modifications for achieving a permittable development from the District, but declined to accept the suggested practicable design modifications. Koontz never responded in writing to the District's suggested design modifications.

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 in 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 in the Econlockhatchee River Hydrologic Basin.

16. Implementation of one or more of these off-site 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 WRM permit 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 of the proposed project.

CONCLUSIONS OF LAW

21. The District has jurisdiction over Koontz's proposed project. Section 373.069(2)(c), Fla. Stat.; Chapters 17-113 and 17-312, Fla. Admin. Code.

22. To obtain an WRM permit from the District, it is Koontz's burden to provide reasonable assurance that the proposed project is not contrary to the public interest. Rule 17-312.080(2), Fla. Admin. Code.

23. The seven criteria of the public interest test are set forth below:

Whether the project will adversely affect the public health, safety, or welfare or the property of others.

Whether the project will adversely affect the conservation of fish and wildlife, including endangered or threatened species or their habitats.

Whether the project will adversely affect navigation or the flow of water or cause harmful shoaling.

Whether the project will adversely affect the fishing or recreational values or marine productivity in the vicinity of the project.

Whether the project will be of a temporary or permanent nature.

Whether the project will adversely affect or enhance significant historical and archeological resources under the provisions of Section 267.061, Florida Statutes.

The current condition and relative value of functions being performed by areas affected by the proposed activity.

Sections 373.418(2), Fla. Stat. (1993) and 403.918(2)(a), Fla. Stat. (1991); Rule 17-312.080(2), Fla. Admin. Code.

24. Koontz failed to provide reasonable assurance that the proposed project which, if constructed, would displace natural wildlife habitat, cause adverse impacts to the conservation of fish and wildlife, and would adversely affect the current condition and relative value of the functions being performed by the wetlands, is not contrary to the public interest. Rule 17-312.080(2), Fla. Admin. Code.

25. Measuring the proposed project with the public interest criteria indicates that without an adequate mitigation plan, the proposed project is contrary to the public interest. Rule 17-312.080(2), Fla. Admin. Code.

26. In failing to respond in writing to the district as to whether or not the identified modification to the proposed project is practicable and whether he would make the identified modification, Koontz failed to comply with Rule 17-312.060(10), Fla. Admin. Code.

27. Koontz failed to provide reasonable assurance that the proposed project when considered with projects which may reasonably be expected to be located within the jurisdictional extent of waters, would not result in unacceptable cumulative impacts upon wetland functions. Rule 17-312.060(10), Fla. Admin. Code.

28. Based on the high quality of the wetlands and the impacts proposed to these areas, the on-site mitigation plan proposed by Koontz is inadequate, and therefore the proposed project fails to meet the requirements of Rules 17-312.080(2) and 17-312.340, Fla. Admin. Code.

29. Accordingly, the project does not comply with rules 17-312.060(10), 17-312.080(2), and 17-312.340, Fla. Admin. Code.

WHEREFORE, upon consideration, it is ORDERED that the WRM Application No. 12-095-0109A of Coy A. Koontz is DENIED.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY: Patricia W. Harden
PATRICIA W. HARDEN, Chair
Governing Board

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

Patricia C. Schultz
PATRICIA C. SCHULTZ
District Clerk