

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

IN RE:

**CAPE ROAD, LLC
APPLICATION NO. 4-031-103652-1
DUVAL COUNTY, FLORIDA**

FILE OF RECORD 2007-29

_____ /

**NOTICE OF AGENCY ACTION DENYING
PERMIT APPLICATION NO. 4-031-103652-1**

THIS MATTER came before the Governing Board of the St. Johns River Water Management District (hereinafter "District") on May 8, 2007. The Governing Board, having been fully advised of the facts by the applicant and District staff, hereby finds the following facts and conclusions of law and enters the following order:

FINDINGS OF FACT

1. On January 30, 2006, Applicant, Cape Road, LLC (hereinafter "Cape"), applied for an environmental resource permit (ERP) pursuant to chapter 40C-4, F.A.C., (Permit Application No. 4-031-103652-1) to authorize the construction and operation of a surface water management system (hereinafter "System") for a single family residential subdivision in Duval County, Florida.

2. A site inspection by District staff on January 26, 2007, revealed that Cape had commenced construction of the System by partially constructing a stormwater pond and water control structure and bringing a considerable amount of fill on-site. By letter dated January 30,

2007, District staff advised Cape that no further work should occur until Cape obtained the requisite permit or received other direction from the District.

3. The project site is a 4.73 acre parcel (hereinafter the "Cape Property") located near the intersection of Greenland Road and Mountain Wood Lane on the south side of Jacksonville in Duval County, Florida. The planned subdivision was to consist of ten (10) lots, each measuring approximately 1/4 acre in size.

4. The Cape Property is a rectangular parcel that is approximately 167 feet wide and 1,288 feet long, and is bordered on the north side by Greenland Road, on the west side by a single family residential property, on the east side by a single family residential property and on the south side by a residential subdivision known as Sweetwater Creek South, Unit 2 West. Cape proposed to construct a roadway running along the eastern side of the Cape Property and to build single-family residences on each of the lots. Each of the lots was proposed to front the roadway. The System for the Cape Property included graded lots, curb and gutter roads, inlets and storm sewers and one wet detention pond.

5. As part of the System, Cape proposed to modify an existing pond to provide water quality treatment of runoff and provide attenuation of peak discharge rates. The pond is located in the southernmost area of the Cape Property, immediately south of lot 10. As part of the pond modification, Cape proposed to construct an outfall weir with a bleed down orifice to allow for discharge of treated runoff from the wet detention pond. The discharge from the orifice would flow into wetlands on the adjacent property to the west.

6. The existing land uses on the 4.73 acre Cape Property, under the Florida Land Use Cover and Classification System, are classified as residential uplands, upland coniferous forests, and mixed forest wetland. The mixed forest wetland area totals 0.66 acres.

7. The wetland area is located in the center of the Cape Property, on lots 4 and 5, and extends westward offsite. As part of its application, Cape proposed to fill 0.49 acres of the 0.66 acre on-site wetland area. As a result of the proposed filling of 0.49 acres of wetland on the Cape Property the storage capacity of the whole wetland system, including both the wetlands on the Cape Property and the wetlands that extend westward offsite, would be reduced.

8. A lot with a single-family residence, commonly known as 5014 Greenland Road (hereinafter the "5014 Property"), abuts the western side of the Cape Property. The 5014 Property is approximately 80 feet wide, and extends the length of the Cape Property. The single family residence on the 5014 Property is located approximately 100 feet south of Greenland Road on the 5014 Property and is approximately 30 feet west of the Cape Property.

9. The 5014 Residence has a finished floor elevation of 28.45 feet. The existing natural grade elevation around the 5014 Residence is approximately 27 feet.

10. A wetland area is located on the 5014 Property (hereinafter the "5014 Wetland"), beginning approximately 75 feet south of the 5014 Residence and extending the remaining length of the 5014 Property. The 5014 Wetland is an extension of the wetland on the Cape Property. The 5014 Wetland contains a low, depressional area at its northern end. This low point will hold water up to an elevation of 25 feet before the water can continue to flow south into the remaining wetlands.

11. Immediately to the west of the 5014 Property is the Community and Fellowship Center of the Hindu Society of Northeast Florida, Inc. (hereinafter the "Society Property"). The Society Property abuts Greenland Road to the north, covers approximately 9.856 acres, is approximately 330 feet wide, and extends the length of the 5014 Property. There is a privacy fence facing the 5014 Property on the eastern edge of the Society Property near its boundary with the 5014 Property. At the fence line on the Society Property, the elevation is approximately 26.2 feet. Runoff from areas of the Society Property drains into the 5014 Wetland.

12. A lot containing a single-family residence, commonly known as 5040 Greenland Road (hereinafter the "5040 Property"), abuts the eastern side of the Cape Property. The 5040 Property is approximately 80 feet wide and extends the length of the Cape Property. A single-family residence is located approximately 300 feet south of Greenland Road on the 5040 Property (hereinafter the "5040 Residence"). The 5040 Residence is approximately 30 feet east of the Cape Property.

13. The 5040 Residence has a finished floor elevation of 26.83 feet. The natural grade elevation around the 5040 Residence is approximately 26.5 feet. The proposed road traversing the Cape Property on its eastern boundary has a proposed elevation of 25.7 at the point closest to the 5040 Residence.

14. Each lot on the Cape Property is proposed to be filled so that the western edge of each lot is a high point on each lot (hereinafter referred to as the "Fill High Point Elevation"). The existing natural grade elevation of the Cape Property, moving north to south, on lot 1 ranges from 26.1 - 26.5 feet, on lot 2 ranges from 26.7 - 26.9 feet, on lot 3 ranges from 26.9 - 27.3 feet, on lot 4 ranges from 24.0 - 26.0 feet, and on lot 5 ranges from 24.5 - 26.0 feet. On Cape's plans,

the fill was approximately 3 feet above the existing natural grade on the first 4 lots south of Greenland Road and increased to approximately 4 feet above the existing grade on the rear 6 lots. The Fill High Point Elevation of the Cape Property is approximately 30 feet and runs the length of the western edge of the Cape Property. This design proposed to direct all runoff from the Fill High Point Elevation, located on the rear of each lot, around the finished floor elevation of the residence on each lot, down to the front of the lot, and then into curb inlets and piping. The curb inlets and piping would direct the water to the wet detention pond located at the rear of the Cape Property just south of lot 10. The road inlet elevations were proposed to be approximately 27.33 feet and the road curb height was proposed to be approximately 27.8 feet.

15. Cape's consultant testified before the District Governing Board that Cape proposed to build a privacy fence along the western edge of the Cape Property atop the Fill High Point Elevation, with the face of the fence being toward the 5014 Property.

16. The Fill High Point Elevation next to the 5014 Property is to be approximately 30 feet and is approximately one and a half feet higher than the 5014 Residence's finished floor elevation.

17. The System also included a swale running along the western boundary of the first 4 lots, below and to the west of the Fill High Point Elevation. The swale was designed to route runoff from the front and side of the 5014 Property to the south, past the 5014 Residence, and ultimately into the 5014 Wetland.

18. The 5014 Property owner testified in opposition to issuance of an ERP because the System would increase the existing water levels in the depressional area in the 5014 Wetlands, such that the 5014 Property would be adversely affected.

19. The 5014 Property owner and the 5040 Property owner both testified that their respective properties would be flooded if the System were constructed on the Cape Property. During such testimony, the owner of the 5014 Property and Cape's representative agreed that given the higher elevation of, and the fence on, the Society Property on one side of the 5014 Property, and the proposed elevation that would result from the construction of the System, the 5014 Property would seemingly be in a "tunnel" created by having the higher elevation Cape Property and Society Property on either side of the 5014 Property. The Governing Board found the 5014 Property owner's testimony particularly credible.

20. To support Cape's application, Cape's consultant modeled the flow of runoff out of the 5014 Wetland as flow over a weir. However, the location of the weir at which Cape's consultant modeled the flow of runoff out of the 5014 Wetland was not at the narrowest outflow constriction. Further, the weir from the proposed wet detention pond was incorrectly modeled as a 48" weir in the modeling submitted by Cape's consultant, since the application proposes a 54" weir in the project plans. The modeling undertaken by Cape's consultant also did not take into account the orifice flow from either the proposed wet detention pond or from the Society Property. Ultimately, the cumulative effect of the errors in the modeling prepared by Cape's consultant could lead to an underestimation of the peak stage in the 5014 Wetland, including the depression area in the northern part of the 5014 Wetland. Therefore, Cape failed to provide the necessary reasonable assurance for permit issuance.

21. The swale running along the edge of the Cape Property located next to the 5014 Property is delimited within a ten (10) foot drainage easement. Fourteen (14) feet is necessary as a minimum width for the easement given the proposed elevations and cross-sections shown in the

proposed project plans. Consequently, Cape would not be capable, based on generally accepted engineering and scientific principles, of constructing the System, nor would the System perform and function as proposed.

22. Cape could address the reasons for this denial of the permit application by making the following changes:

a) Cape could perform additional modeling that corrects the errors in the modeling submitted in support of the application and demonstrates the System's compliance with 40C-4.301(1)(a),(b), and (c), F.A.C.

b) Cape could redesign the System to eliminate the deficiencies described in this Notice and demonstrate that the System meets all applicable District rule criteria.

CONCLUSIONS OF LAW

1. The District has jurisdiction over the Cape Property and the project proposed by Cape. Sections 373.069(2)(c), 373.413, and 373.416, F.S.; Chapters 40C-4 and 40C-42, F.A.C.

2. To obtain an ERP from the District, it is Cape's burden to provide reasonable assurance that the proposed system will comply with all conditions for issuance of the permit pursuant to Rules 40C-4.301 and 40C-4.302, F.A.C.

3. As discussed below, Cape has not demonstrated that construction, operation and maintenance of the System will not cause adverse water quantity impacts to adjacent lands, will not cause flooding to off-site property, and will not cause adverse impacts to existing surface water storage and conveyance capabilities. Accordingly, Cape has not provided reasonable

assurance that the proposed System complies with sections 40C-4.301(1)(a), 40C-4.301(1)(b), and 40C-4.301(1)(c), F.A.C.

4. Cape failed to establish that the System would not cause adverse water quantity impacts on the 5014 Property. Based upon testimony before the Governing Board, Cape's proposed project would increase the water levels in the depressional area in the 5014 Wetland, such that the 5014 Property would be adversely affected. Accordingly, Cape has not provided reasonable assurance that the construction, operation and maintenance of the proposed system will not cause adverse water quantity impacts to adjacent lands. Section 40C-4.301(1)(a), F.A.C.

5. Cape failed to establish that the System would not cause flooding to the 5014 Property. Cape's proposed development included the deposition of a significant amount of fill on the Cape Property. Ostensibly, the fill was to raise the elevation of the lots on the Cape Property to direct runoff from the western or rear area of the lots to the eastern or front area of the lots and then direct the water into the curb inlets and piping. However, the submitted modeling did not provide reasonable assurance that the elevations resulting from the deposition of significant fill would not cause flooding on the 5014 Property given the difference in elevation between the proposed elevation of the lots and the finished floor elevation of the 5014 Residence. The testimony by the 5014 Property owner and Cape's representative before the Governing Board agreed that the 5014 Property would seemingly be in a "tunnel" as a result of the elevations of the adjoining Cape Property and Society Property, if the System were constructed as proposed. The 5014 Property owner also testified that as a result of these elevations, water would drain to and flood the the 5014 Property. Based upon the testimony given by the 5014 Property owner and Cape's representative, the Board concludes that water would drain to the

lower 5014 Property and will likely result in flooding during storm events. Accordingly, Cape has not provided reasonable assurance that the construction, operation and maintenance of the proposed system will not cause adverse flooding to offsite property. Section 40C-4.301(1)(b), F.A.C.

6. Cape failed to show that the System would not cause adverse impacts to existing surface water storage and conveyance capabilities. As part of its application, Cape proposed to fill 0.49 acres of the 0.66 acre wetland located on lots 4 and 5 of the Cape property. The fill material deposited in the Cape Wetland would reduce the water storage capacity of the entire wetland, including reducing the water storage capacity of the area of wetland located on the 5014 Property. As described in Findings of Fact number 20, Cape's consultant's modeling of the runoff contained errors as to the inflows to the 5014 Wetland, the depression and its outflow capacity. These errors could result in water staging up higher in the 5014 Wetland as a result of runoff than is reflected in the modeling, thereby diminishing and adversely affecting the storage capabilities of the 5014 Wetland. Accordingly, Cape has not provided reasonable assurance that the construction, operation, and maintenance of the proposed system will not cause adverse water quantity impacts to surface water storage and conveyance capabilities. Section 40C-4.301(1)(c), F.A.C.

7. As found in Finding of Fact 21, a fourteen (14) foot easement is necessary for Cape to construct the swale it has proposed along the western edge of the Cape Property. The proposed plans show the swale as being constructed in a ten (10) foot easement. Cape has not provided reasonable assurance that the construction of the system will be capable, based on

generally accepted engineering and scientific principles, of being performed and functioning as proposed. Section 40C-4.301(1)(i), F.A.C.

WHEREFORE, upon consideration, it is ORDERED that permit application no. 4-031-103652-1 is DENIED.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY: Kirby B. Green III
Kirby B. Green III, Executive Director

RENDERED this 26th day of July 2007, in Palatka, Florida.

BY: Andrea Berttram for
ROBERT NARWOCKI
DISTRICT CLERK

Notice Of Rights

1. A person whose substantial interests are or may be affected has the right to request an administrative hearing by filing a written petition with the St. Johns River Water Management District (District). Pursuant to Chapter 28-106 and Rule 40C-1.1007, Florida Administrative Code, the petition must be filed (received) either by delivery at the office of the District Clerk at District Headquarters, P. O. Box 1429, Palatka Florida 32178-1429 (4049 Reid St., Palatka, FL 32177) or by e-mail with the District Clerk at Clerk@sjrwmd.com, within twenty-six (26) days of the District depositing notice of District decision in the mail (for those persons to whom the District mails actual notice), within twenty-one (21) days of the District emailing notice of District decision (for those persons to whom the District emails actual notice), or within twenty-one (21) days of newspaper publication of the notice of District decision (for those persons to whom the District does not mail or email actual notice). A petition must comply with Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Chapter 28-106, Florida Administrative Code. The District will not accept a petition sent by facsimile (fax), as explained in paragraph no. 4 below. Mediation pursuant to Section 120.573, Florida Statutes, is not available.
2. A person whose substantial interests are or may be affected has the right to a formal administrative hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, where there is a dispute between the District and the party regarding an issue of material fact. A petition for formal hearing must also comply with the requirements set forth in Rule 28-106.201, Florida Administrative Code.
3. A person whose substantial interests are or may be affected has the right to an informal administrative hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes, where no material facts are in dispute. A petition for an informal hearing must also comply with the requirements set forth in Rule 28-106.301, Florida Administrative Code.
4. A petition for an administrative hearing is deemed filed upon receipt of the complete petition by the District Clerk at the District Headquarters in Palatka, Florida. Petitions received by the District Clerk after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be deemed filed as of 8:00 a.m. on the next regular District business day. The District's acceptance of petitions filed by e-mail is subject to certain conditions set forth in the District's Statement of Agency Organization and Operation (issued pursuant to Rule 28-101.001, Florida Administrative Code), which is available for viewing at www.sjrwmd.com. These conditions include, but are not limited to, the petition being in the form of a PDF file and being capable of being stored and printed by the District. Further, pursuant to the District's Statement of Agency Organization and Operation, attempting to file a petition by facsimile is prohibited and shall not constitute filing.

5. Failure to file a petition for an administrative hearing within the requisite time frame shall constitute a waiver of the right to an administrative hearing. (Rule 28-106.111, Florida Administrative Code).
6. The right to an administrative hearing and the relevant procedures to be followed are governed by Chapter 120, Florida Statutes, Chapter 28-106, Florida Administrative Code, and Rule 40C-1.1007, Florida Administrative Code. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means the District's final action may be different from the position taken by it in this notice. A person whose substantial interests are or may be affected by the District's final action has the right to become a party to the proceeding, in accordance with the requirements set forth above.
7. A person with a legal or equitable interest in real property who believes that a District permitting action is unreasonable or will unfairly burden the use of their property, has the right to, within 30 days of receipt of the notice of District decision regarding a permit application, apply for a special magistrate proceeding under Section 70.51, Florida Statutes, by filing a written request for relief at the Office of the District Clerk located at District Headquarters, P. O. Box 1429, Palatka, FL 32178-1429 (4049 Reid St., Palatka, FL 32177). A request for relief must contain the information listed in Subsection 70.51(6), Florida Statutes. Requests for relief received by the District Clerk after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be deemed filed as of 8:00 a.m. on the next regular District business day.
8. A timely filed request for relief under Section 70.51, Florida Statutes, tolls the time to request an administrative hearing under paragraph no. 1 above. (Paragraph 70.51(10)(b), Florida Statutes). However, the filing of a request for an administrative hearing under paragraph no. 1 above waives the right to a special magistrate proceeding. (Subsection 70.51(10)(b), Florida Statutes).
9. Failure to file a request for relief within the requisite time frame shall constitute a waiver of the right to a special magistrate proceeding. (Subsection 70.51(3), Florida Statutes).
10. Any person whose substantial interests are or may be affected who claims that final action of the District constitutes an unconstitutional taking of property without just compensation may seek review of the action in circuit court pursuant to Section 373.617, Florida Statutes, and the Florida Rules of Civil Procedures, by filing an action in circuit court within 90 days of rendering of the final District action, (Section 373.617, Florida Statutes).
11. Pursuant to Section 120.68, Florida Statutes, a party to the proceeding before the District who is adversely affected by final District action may seek review of the action in the District Court of Appeal by filing a notice of appeal pursuant to Rules 9.110 and 9.190,

Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.

12. A party to the proceeding before the District who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, Florida Statutes, may seek review of the order pursuant to Section 373.114, Florida Statutes, by the Florida Land and Water Adjudicatory Commission, by filing a request for review with the Commission and serving a copy on the Florida Department of Environmental Protection and any person named in the order within 20 days of the rendering of the District order.
13. A District action is considered rendered, as referred to in paragraph nos. 10, 11, and 12 above, after it is signed on behalf of the District, and is filed by the District Clerk.
14. Failure to observe the relevant time frames for filing a petition for judicial review as described in paragraph nos. 10 and 11 above, or for Commission review as described in paragraph no. 12 above, will result in waiver of that right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF AGENCY ACTION DENYING PERMIT APPLICATION NO. 4-031-103652-1 and NOTICE OF RIGHTS has been furnished by United States Mail to each of the following:

James Putnal, Cape Road, LLC, P.O. Box 19691, Jacksonville, Florida 32245
Jim and Joann Saplis, 11731 Mountain Wood Lane, Jacksonville, Florida 32258
Michael & Florence Mapayi, 5040 Greenland Road, Jacksonville, Florida 32258
Devon & Angela Colee, 5014 Greenland Road, Jacksonville, Florida 32258

at 4:00 p.m. this 26th day of July, 2007.



ROBERT NAWROCKI
DISTRICT CLERK
St. Johns River Water
Management District
Post Office Box 1429
Palatka, FL 32178-1429

CERTIFIED MAIL #

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Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.

12. A party to the proceeding before the District who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, Florida Statutes, may seek review of the order pursuant to Section 373.114, Florida Statutes, by the Florida Land and Water Adjudicatory Commission, by filing a request for review with the Commission and serving a copy on the Florida Department of Environmental Protection and any person named in the order within 20 days of the rendering of the District order.
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at 4:00 p.m. this 26th day of July, 2007.

Andria Bertram for

ROBERT NAWROCKI
DISTRICT CLERK
St. Johns River Water
Management District
Post Office Box 1429
Palatka, FL 32178-1429

CERTIFIED MAIL #

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Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.

12. A party to the proceeding before the District who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, Florida Statutes, may seek review of the order pursuant to Section 373.114, Florida Statutes, by the Florida Land and Water Adjudicatory Commission, by filing a request for review with the Commission and serving a copy on the Florida Department of Environmental Protection and any person named in the order within 20 days of the rendering of the District order.
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Andria Bertram for

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DISTRICT CLERK
St. Johns River Water
Management District
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Palatka, FL 32178-1429

CERTIFIED MAIL #

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Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.

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Andra Bertram for

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DISTRICT CLERK

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