



# FLORIDA DEPARTMENT OF Environmental Protection

Northeast District  
8800 Baymeadows Way West, Suite 100  
Jacksonville, Florida 32256

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Interim Secretary

July 22, 2021

## **CERTIFIED MAIL-RETURN RECEIPT**

Mr. Timothy A. Stevens	Mr. Daniel Bergin	Mr. Roy Shaw
Baymit II, LLC	Dirt On Demand	Shaw's Land Clearing
3708 West Swann Avenue	3802 Ehrlich Road	2762 West Beaver Street
Suite 200	Suite 312	Jacksonville, Florida 32254
Tampa, Florida 33609-4527	Tampa, Florida 33613	

**RE: Warning Letter No. WL21-159**  
**RE: #136246-1100**  
**0 Grove Park Boulevard, Jacksonville, Florida 32216**  
**Site ID No. ERP\_407243**  
**Duval County – Environmental Resource Program**

Dear Messrs. Stevens, Bergin and Shaw:

Multiple complaint inspections were conducted on your project property between June 8, 2021 and July 19, 2021. During these inspections, possible violations of Chapter 403, Florida Statutes (Fla. Stat.), and Rules 62-330, 62-621, 62-302 and 62-620, Florida Administrative Code (Fla. Admin. Code), were observed.

During the inspections, Department of Environmental Protection (Department) personnel noted the following:

- On the early evening of Friday, July 16, 2021, a discharge of turbid water occurred from the property in question to Pottsburg Creek.
- From approximately February 2021 to June 24, 2021, you were engaging in construction activities of greater than one acre without an appropriate or valid permit issued by the Department, which is prohibited in accordance with Section 403.161(1)(b), Fla. Stat., and 62- 620.300(2), Fla. Admin. Code.

**Rule 62-330.020(2)(a), Fla. Admin. Code** - Where activities in, on, or over wetlands and surface waters require a permit.

**Section 403.161(1)(b), Fla. Stat.** - Where it is a violation to fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department, pursuant to its lawful authority.

**Rule 62-621.260(1)-(3), Fla. Admin. Code** – Respondent failed to maintain Best Management Practices pursuant to the NPDES General Permit Condition Part 5.

**Rule 62-302.300, Fla. Admin. Code** - Respondent discharged turbid water above acceptable Nephelometric Turbidity Units (NTUs) causing a water quality violation, pursuant to NPDES Generic Permit Condition 1.5.1.

**Rule 62-620.300, Fla. Admin. Code** – No person shall discharge wastes to waters without a permit from the Department, unless exempted by Department rule or statute.

Violations of Florida Statutes or administrative rules may result in liability for damages and restoration, and the judicial imposition of civil penalties, pursuant to Sections 403.121, 403.141 and 403.161, Florida Statutes.

Please contact James Maher, at (904) 256-1650, within 15 days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in receiving any facts that you may have which might assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Fla Stat. We look forward to your cooperation in completing our investigation and resolving this as soon as possible.


Sincerely,



Gregory J. Strong  
District Director

GS/nh/jm

Enclosure: Inspection Report

 cc: FDEP-NED: James Maher, Matthew Kershner, Keri Armstrong, Christina Sellers, Neil Hornick, Sally Logan, Joni Petry, Russell Simpson, Ronnie Hoenstine, David Terrones, DEP\_NED

City of Jacksonville:

Nick Duin ([NDuin@coj.net](mailto:NDuin@coj.net)), Patrick Mondo ([PMondo@coj.net](mailto:PMondo@coj.net)),  
Melissa Long ([MelissaL@coj.net](mailto:MelissaL@coj.net)), Terry Carr ([TCarr@coj.net](mailto:TCarr@coj.net))

Army Corp. of Engineers: Diane Griffin ([Dianne.S.Griffin@usace.army.mil](mailto:Dianne.S.Griffin@usace.army.mil))

Dirt on Demand: Daniel Bergin ([DBergin@OnDemandFL.com](mailto:DBergin@OnDemandFL.com))

Shaw's Land Clearing: Roy Shaw – ([rshaw@shawtree.com](mailto:rshaw@shawtree.com))



# Florida Department of Environmental Protection

NORTHEAST DISTRICT COMPLIANCE ASSURANCE PROGRAM

## ERP Inspection Report

Inspection Date: 7/19/2021

Inspection Type: ☒ Complaint ☐ Compliance ☐ Enforcement

Lead DEP Inspector: Neil Hornick, P.G.

☐ Other: [Click here to enter text.](#)

Complaint No. 37085 ERP Site No. 407243 CE Project No. 387541 Permit No. SJRWMD Permit 159076-1

Owner/Responsible Party: Baymit II LLC, (Timothy Simmons) Property Owner

Contact: (813) 874-1700

Contractor/Agent: Daniel Bergin, Dirt On Demand

Contact: (813) 280-9941

Location: 0 Grove Park Boulevard, Jacksonville, Florida 32216 (RE# 136246-1100)

Waterbody: N/A

OFW: ☐ Yes ☒ No

Aquatic Preserve: ☐ Yes ☒ No

State Lands: ☐ Yes ☒ No

### Site History & Inspection Overview

#### Site History:

On May 28, 2021, the Department received a complaint regarding clearing trees in a Conservation Easement (CE) located behind 1412 Grove Park Blvd. Complainant was concerned that the wetland line and CE are not shown on plans and concerned contractors may impact the CE. The Department has visited the site in the past. The Department evaluated the site to determine if any of the site activity occurred in the CE. The CE was delineated with silt fence, as such the Department determined that all activities were conducted in uplands. Minor noncompliance issues (i.e. silt fence) were identified and immediately corrected.

#### Site Inspection Overview:

Drone video was received on July 17 and 21, 2021 and documented turbid water being pumped from the project site through the conservation easement wetlands to receiving water Pottsburg Creek. The Department was on-site on July 19 and 20, 2001 and the City of Jacksonville (COJ) was on-site on July 19, 20 and 21, 2021. Department and COJ observed several spots in the silt fence where a discharge hose may have been laid on it.

Compliance Status: ☐ In Compliance ☐ Minor Non-Compliance ☒ Significant Non-Compliance

### Resource Assessment

#### Impact Description:

The project activity is in uplands, located adjacent to CE wetlands which leads to Pottsburg Creek as the receiving water. During the July 19, 2021 inspection, we documented where portions of the silt fence between the uplands and the adjacent CE wetlands were crushed down and failed, apparently under the weight of the discharge hose, and the area of discharge had been scoured to some degree. Furthermore, sedimentation was observed outside the perimeter controls within the CE wetlands and a pool of turbid water that appeared to match the turbidity violations presented in the drone footage as well as the area of the pit that had been dewatered was also observed in the CE wetlands.

## Investigation Summary

### SIGNIFICANT NON-COMPLIANCE DESCRIPTION:

Based on a video the Department received on Sunday July 18, 2021, extensive turbidity issues coming from dewatering operations on this property were observed. A site visit was conducted on July 19, 2021 and I did not observe the pump or any hoses as showed in the associated video. I did observe an area that may have been used for placement of a hose due to the silt fence being damaged and repaired in such a way that it could possibly be opened again. I then met with Nick Duin (COJ), Pat Mondo (COJ) and Sally Logan (Department) at the boat ramp across Beach Boulevard who conducted an investigation by water to determine if any turbidity from the dewatering activity remained. Per their inspection of the site from the water, there was no visible turbidity or dewatering activities observed.

We then travelled to the site as Mr. Daniel Bergin requested that we spoke with the site Superintendent Mr. Kerry Williams as well as Mr. Jason Lebitz. Mr. Williams, like Mr. Bergin, indicated that the pump has not been used in approximately 10 days and that no-one works on the site on weekends. He also stated that when the pump is used, they only move water around on-site and no water is pumped off-site. We walked the site and along the western portion and noted that there were several portions of the silt fence that were damaged. We viewed the area within the CE wetlands and observed a small puddle of highly turbid standing water that had the same color as in the video mentioned above. We then walked back to the eastern portion of the site and viewed the pump. There were no hoses hooked up to it during the time of inspection.

Both Mr. Williams and Mr. Lebitz indicated that their crew was not responsible for the discharge that occurred on Friday, July 16, 2021. The Department suggested to Mr. Williams and Mr. Lebitz that they take photos every day at the beginning and end of the day as well as every time they pump water to confirm what was where so far as the pump and hoses being used as well as when the discharged water was placed. We also suggested that the silt fence is repaired immediately and that they create an earthen berm along the silt fence to the west in addition to the silt fence. Mr. Williams said it would be done today and photos submitted to the group upon its completion. Mr. Williams also stated that he may install game cameras to catch anyone being on-site during off-hours. When asked, Mr. Williams said that barring weather delays, he expects to have this project completed within the next 10 days.

Prior to leaving, Department personnel were approached by Mr. Michael Best and he explained that he was the person who took the drone video. He indicated that the drone video was taken on in the early evening of Friday, July 16, 2021. Mr. Best said he would screen shot the video with the date/time stamp as well as the coordinates to me. The photo was received later that evening and confirmed that the drone video was taken on Friday, July 16, 2021 at 20:14 at 30° 17' 31.2" North / 81° 34' 19.2" West. COJ indicated that they will conduct several additional, unannounced, site inspections this week to ensure they are operating in compliance with all applicable rules and regulations. Per a discussion with, and an e-mail received from, Mr. Bergin on July 20, 2021, he informed me that the pump was in place at the time of the drone video, but there were no personnel on-site after 15:30 and the pump was not running when the operators left the site. I was also told that the pump was moved to the front of the site on Monday, July 19, 2021 for its anticipated removal from the property. Research indicates that the property was purchased on April 27, 2021 by Baymit II, LLC, with Timothy A. Simmons as registered agent. On-site activities have been conducted by Dirt on Demand and Shaw Land Clearing, LLC.

From approximately February 2021 to June 24, 2021, the contractors were engaging in construction activities of greater than one acre without an appropriate or valid permit issued by the Department, which is prohibited in accordance with section 403.161(1)(b), Fla. Stat., and 62-620.300(2), Fla. Admin. Code. During a site visit by COJ on Wednesday, July 21, 2021 for the collection of water samples for turbidity analysis. Three water samples were collected, one was collected just outside the perimeter BMPs (Discharge Point), a background sample was taken further into the CE towards Pottsburg Creek and the third sample was taken on-

site. COJ provided split samples with the Department as well as Dirt on Demand. The samples for the Department were scanned using a Hatch 2100 Q Turbidimeter. The background sample had a turbidity reading of 28 NTU and the Discharge Point and on-site samples each had turbidity readings of greater than 1,000 NTU.

Statute/Rule Reference(s):

**Rule 62-330.020(2)(a) Fla. Admin. Code** - Where activities in, on, or over wetlands and surface waters require a permit.

**Section 403.161(1)(b) Florida Statutes** - Where it is a violation to fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the department pursuant to its lawful authority.

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**Rule 62-620.300 Fla. Admin. Code** – No person shall discharge wastes to waters without a permit from the Department, unless exempted by Department rule or statute.

Recommendations for Return to Compliance

A Warning Letter will be issued to Baymit II, LLC, Dirt in Demand and Shaw Land Clearing, LLC citing violations of Rule 62-330.020(2), Fla. Admin. Code, Section 403.161(1)(b), Florida Statutes, Rule 62-621.260(1)-(3), Fla. Admin. Code, Rule 62-302.300, Fla. Admin. Code. and Rule 62-602.300, Fla. Admin. Code.

Follow-Up Action: Upon receipt of the Warning Letter, a discussion will be held with the affected parties to discuss remedial options as well as applicable penalties.

Supporting Documentation Attached:

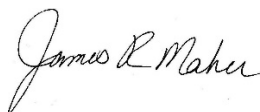
- ☐ Figures such as maps, diagrams, and/or aerial imagery
- ☒ Site inspection photographs
- ☐ Chapter 62-340, F.A.C. Data Form(s)
- ☐ SSL Lease Inspection Report
- ☐ Other: Click here to list additional attachments (e.g., field notes, possibly with impact diagram and/or sketch; permit plans/drawings; impact evaluation documents like TSR or UMAM; etc.)



Neil Hornick, P.G., Professional Geologist I

7/22/2021

Date



for

Matt Kershner, Environmental Manager

7/22/2021

Date



ERP Site Inspection Figures

Inspection Date: 6/08/2021

Lead DEP Inspector: Neil Hornick, P.G.



**Figure 1:** 6-8-2021: General site view.



**Figure 2:** 6-8-2021: Silt fence on western Conservation Easement boundary.



ERP Site Inspection Figures

Inspection Date: 6/08/2021

Lead DEP Inspector: Neil Hornick, P.G.



**Figure 3:** 6-8-2021: Excavation on Northeastern portion of the property.



**Figure 4:** 6-29-2021: Muck beyond silt fence on western Conservation Easement boundary.

ERP Site Inspection Figures

Inspection Date: 6/08/2021

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**Photo 5:** 7-16-2021: Drone photo of turbid water flowing into Pottsburg Creek.



**Photo 6:** 7-16-2021: Drone photo of turbid water being pumped into Pottsburg Creek.



ERP Site Inspection Figures

Inspection Date: 6/08/2021

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**Photo 7:** 7-19-2021: Northwestern portion of the Property.



**Photo 8:** 7-19-2021: Muck from Wawa on central portion of the property.

ERP Site Inspection Figures

Inspection Date: 6/08/2021

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**Photo 9:** 7-19-2021: Silt fence along western Conservation Easement boundary.



**Photo 10:** 7-19-2021: Turbid standing water in Conservation Easement.