



**Interoffice Memorandum**

July 21, 2020

**TO:** Mayor Jerry L. Demings  
-AND-  
Board of County Commissioners

**FROM:** Jon V. Weiss, P.E., Director  
Planning, Environmental, and Development  
Services Department

**CONTACT PERSON:** **David D. Jones, P.E., CEP, Manager**  
**Environmental Protection Division**  
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**SUBJECT:** July 28, 2020 – Public Hearing  
Millenia Park Partners, LLC, Conservation Area Impact Permit  
Application No. CAI-20-02-019

On February 19, 2020, the Environmental Protection Division (EPD) received an Application for a Conservation Area Impact (CAI) Permit from Millenia Park Partners, LLC (applicant) for authorization of direct impacts to a Class I surface water and Class III wetlands in order to construct a new multi-family development. The project is located at the site of the former Eaglewood Golf Course on P G A Boulevard in Orlando, FL, 32839. The Parcel ID number for the subject property is 21-23-29-1175-00-011. The subject property is located in Orange County Commission District 6.

The application was suspended at the request of the applicant on April 22, 2020 and then re-opened on May 11, 2020. EPD received the final site plans on June 1, 2020 and deemed the application sufficient on June 15, 2020.

The subject property contains 31.30 acres of uplands, 4.57 acres of Class III wetlands, 1.43 acres of Class I surface waters, and a 1.40 acres of Class III surface water. The property also contains three storm water ponds that are permitted by the South Florida Water Management District.

The Class III wetlands consist of moderate quality, wet-prairie wetlands that were created during previous arsenic remediation efforts. As part of Brownfield Site Rehabilitation activities (Site ID: COM\_296582, BF No.: BF480901001) authorized by the Florida Department of Environmental Protection, contaminated soil was removed and disposed of offsite. However, the resultant pits that were created were not backfilled and subsequently, over a period of several years, developed into wetlands.

The Class III surface water is a moderately high quality man-made pond that was created as a water hazard for the previous golf course. The Class I surface water is a remnant of

an unnamed creek that is hydrologically connected to Shingle Creek. Prior to 1971, the northern portion of the creek was severed by dredging of the Americana Canal and the southern portion was re-routed to a man-made ditch which empties into Shingle Creek. However, the portion of the creek that flows through the site was maintained predominately in its natural state until approximately 2000, when a portion of the creek was culverted in order to construct a driving range. The creek was altered again in 2009 when the southern portion was re-routed in order to construct Double Eagle Drive (aka Eaglewood Roadway), which traverses the project site.

The applicant proposes 4.37 acres of direct Class III wetland impacts, 1.40 acres of direct Class III surface water impacts, and 1.29 acres of direct Class I surface water impacts. No secondary impacts are proposed.

EPD staff has evaluated the proposed impacts and site plan with the review criteria. Pursuant to Orange County Code, Chapter 15, Article X, Section 15-396(3)(a), the removal, alteration or encroachment within a Class I conservation area shall only be allowed in cases where no other feasible or practical alternatives exist that will permit a reasonable use of the land or where there is an overriding public benefit. Additionally, pursuant to Section 15-362(5), where wetlands serve a significant and productive environmental function, the public health, safety and welfare require that any alteration or development affecting such lands should be so designed and regulated so as to minimize or eliminate any impact upon the beneficial environmental productivity of such lands, consistent with the development rights of property owners. Mitigation for Class III wetlands shall be allowed in all cases.

The applicant has designed the site so as to avoid impacts to three Class III wetlands and a portion of the Class I surface water. Additionally, only the minimum number of required parking spaces are being provided, and lastly, with the creation of onsite stormwater treatment, downstream water quality is expected to improve post-development. Accordingly, based on the documentation and justifications provided, the applicant has demonstrated that the proposed site plan allows for reasonable use of the land, that there are no other feasible or practical alternatives available to further minimize or eliminate impacts to the Class I and III wetlands or surface waters, and therefore the request meets the criteria for approval.

As mitigation for the impacts, the applicant proposes to purchase 2.57 state mitigation credits from the Hatchineha Mitigation Bank. Additionally, 0.26 acre of onsite wetlands will be preserved (not as mitigation). The mitigation plan, as proposed, offsets the impacts.

Notification of the public hearing was sent via electronic correspondence to the applicant and their agent. Notification of the adjacent property owners is not required.

There has been no enforcement action taken by EPD on the subject property.

### **Staff Findings and Recommendation**

EPD staff has made a finding that the request is consistent with Orange County Code, Chapter 15, Article X, Sections 15-362(5) and 15-396(3)(a) and (c), and recommends approval of CAI Permit No. CAI-20-02-019, subject to the conditions listed below.

#### Specific Conditions:

1. This permit shall become final and effective upon expiration of the 30 calendar day period following the date of rendition of the Board's decision approving the permit, unless a petition for writ of certiorari or other legal challenge has been filed within this timeframe. Any timely filed petition or other challenge shall stay the effective date of this permit until the petition or other challenge is resolved in favor of the Board's decision.
2. The operational phase of this permit is effective upon the completion of the construction and continues in perpetuity.
3. The wetland impacts must be completed in accordance with Sheet DP1.1 prepared by Kimley-Horn, dated as received by the Environmental Protection Division (EPD) on June 1, 2020. Construction shall be completed within five years from issuance of this permit unless extended in writing. Requests for permit extension must be submitted to EPD prior to the expiration date.
4. Conservation areas shall be clearly marked with signage that identifies the wetland and upland buffer. These signs shall conform to the detail and locations shown on Sheet DP1.1 of the approved plans, dated as received by EPD on June 1, 2020. The signs shall be installed prior to the Certificate of Completion, or platting, whichever first occurs.
5. Prior to initiating any construction within wetlands or surface waters authorized for impact, EPD shall receive documentation from the Hatchineha Mitigation Bank indicating that the purchase of 2.57 state mitigation credits has been completed.
6. In the event that the permittee does not successfully complete the transaction to obtain the requisite 2.57 credits from the Hatchineha Mitigation Bank, the permittee shall obtain a permit modification from the Environmental Protection Officer to provide alternative mitigation for the wetland impacts prior to the commencement of any construction activities.
7. Prior to any filling within the 100-year flood zone, a Flood Plain Permit may be required from the Orange County Stormwater Management Division authorizing the fill.
8. The permittee shall notify EPD, in writing, within 30 days of any sale, conveyance, or other transfer of ownership or control of the real property subject to this permit. The permittee shall remain liable for all permit conditions and corrective actions that may

be required as a result of any permit violations which occur prior to the transfer of the permit by Orange County to a subsequent owner. If applicable, no permit shall be transferred unless and until adequate financial assurance has been provided and approved by Orange County.

9. For projects which disturb one acre or more of land, or which are less than one acre but are part of a larger common plan of development of sale that is greater than one acre, coverage under a National Pollutant Discharge Elimination System (NPDES) Construction Generic Permit (CGP) is required. Prior to the start of land disturbing activities, which includes demolition, earthwork and/or construction, the operator shall prepare a Stormwater Pollution Prevention Plan (SWPPP) and submit to the Florida Department of Environmental Protection (FDEP) a Notice of Intent (NOI) to obtain coverage under the NPDES CGP, pursuant to the requirements of 62-621.300(4)(a), Florida Administrative Code (F.A.C.) As the Operator of the MS4, copy of the NOI shall also be submitted to the Orange County NPDES Environmental Program Supervisor prior to the start of activities. Copies of the SWPPP, NOI, and FDEP Acknowledgement Letter are to be kept on the project site and made available upon request. Upon completion of all land disturbing activities and after final stabilization of the site is complete, the developer/contractor shall submit to FDEP a Notice of Termination (NOT) to end their coverage under the CGP and provide a copy of the NOT to the Operator(s) of the MS4. A copy of the CGP, NOI and additional information can be found at the following website: <http://dep.state.fl.us/water/stormwater/npdes/construction3.htm>
10. Turbidity and sediment shall be controlled to prevent off-site, unpermitted impacts and violations of water quality standards pursuant to Rules 62-302.500, 62-302.530, and 62-4.242, F.A.C. Best Management Practices (BMPs), as specified in the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (2013, or most current version), shall be installed and maintained at all locations where there is the possibility of transferring sediment, turbidity, or other pollutants into wetlands and/or surface waters due to the permitted activities. BMPs are performance based; if selected BMPs are ineffective or if site-specific conditions require additional measures, then the permittee shall implement additional or alternative measures as necessary to prevent adverse impacts to wetlands and/or surface waters. Turbidity discharging from a site must not exceed 29 Nephelometric Turbidity Units (NTU) over background for Class III waters and their tributaries or 0 NTU over background for those surface waters and tributaries designated as Outstanding Florida Waters (OFW). A copy of the Designer and Reviewer Manual can be found at the following website: <https://www.flrules.org/Gateway/reference.asp?No=Ref-04227>.
11. Discharge of groundwater from dewatering operations requires approval from FDEP and the applicable Water Management District. The operator/contractor shall obtain an FDEP Generic Permit for the Discharge of Ground Water from Dewatering Operations pursuant to the requirements of Chapters 62-621.300(2)(a) and 62-620, F.A.C., and Chapter 403 FS. Discharges directed to the County's MS4 require an Orange County Right-of-Way Utilization Permit for Dewatering prior to the start of any discharges.

General Conditions:

12. Subject to the terms and conditions herein, the permittee is hereby authorized to perform or cause to be performed, the impacts shown on the application and approved drawings, plans, and other documents attached hereto or on file with EPD. The permittee binds itself and its successors to comply with the provisions and conditions of this permit. If EPD determines at any time that activities, including without limitation the performance of the required mitigation, are not in accordance with the conditions of the permit, work shall cease and the permit may be revoked immediately by the Environmental Protection Officer. Notice of the revocation shall be provided to the permit holder promptly thereafter.
13. Prior to construction, the permittee shall clearly designate the limits of construction on-site. The permittee shall advise the contractor that any work outside the limits of construction, including clearing, may be a violation of this permit.
14. Construction plans shall be submitted to EPD prior to initiating any construction activities for review and approval. The construction plans shall include, but are not limited to, a site plan clearly depicting the location and acreage of the impact and preservation areas.
15. The permittee shall require the contractor to maintain a copy of this permit, complete with all approved drawings, plans, conditions, attachments, exhibits, and modifications in good condition at the construction site. The permittee shall require the contractor to review the permit prior to commencement of the activity authorized by this permit. The complete permit shall be available upon request by Orange County staff.
16. Issuance of this permit does not warrant in any way that the permittee has riparian or property rights to construct any structure permitted herein and any such construction is done at the sole risk of the permittee. In the event that any part of the structure(s) permitted herein is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent property owner's riparian or other property rights, the permittee agrees to either obtain written consent or to remove the offending structure or encroachment within 60 days from the date of the adjudication. Failure to comply shall constitute a material breach of this permit and shall be grounds for its immediate revocation.
17. This permit does not release the permittee from complying with all other federal, state, and local laws, ordinances, rules and regulations. Specifically, this permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities upon property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 15, Article X of the Orange County Code. If these permit conditions conflict with those of any other regulatory agency the permittee shall comply with the most stringent conditions. The

permittee shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.

18. Should any other regulatory agency require changes to the property, permitted activities, or approved mitigation, the permittee shall provide written notification to EPD of the change prior to implementation so that a determination can be made whether a permit modification is required.
19. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
20. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
21. EPD staff, with proper identification, shall have permission to enter the site at any reasonable time to ensure conformity with the plans and specifications approved by the permit.
22. The permittee shall hold and save the County harmless from any and all damages, claims or liabilities, which may arise by reason of the activities authorized by the permit.
23. All costs, including attorney's fees, incurred by the County in enforcing the terms and conditions of this permit shall be required to be paid by the permittee.
24. The permittee agrees that any dispute arising from matters relating to this permit shall be governed by the laws of Florida, and initiated only in Orange County.
25. Pursuant to Section 125.022, FS, issuance of this permit by the County does not in any way create any rights on the part of the permittee to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the permittee fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.
26. Pursuant to Section 125.022, FS, the applicant shall obtain all other applicable state or federal permits before commencement of development.

**ACTION REQUESTED: Acceptance of the findings and recommendation of the Environmental Protection Division staff and approval of Conservation Area Impact Permit CAI-20-02-019 for Millenia Park Partners, LLC, subject to the conditions listed in the staff report. District 6**

JW/DDJ: mg

Attachments