



**Interoffice Memorandum**

November 4, 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**  
**(407) 836-1406**

**SUBJECT:** November 10, 2020 – Public Hearing  
Horizons West Village I – Withers PD, Conservation Area  
Impact Permit Application No. CAI-20-03-026  
(Related to Public Hearing Case - #PSP-20-02-056 – Withers  
PD, Parcels 11, 13, & 17)

On March 26 2020, the Environmental Protection Division (EPD) received an Application for a Conservation Area Impact (CAI) permit from Withers, LLC (applicant) requesting authorization of direct impacts to 0.05 acre of Class I surface waters, 0.31 acre of Class III surface waters, and 0.99 acre of Class III wetlands in order to construct a single-family residential development with associated infrastructure. The project will also result in 0.05 acre of secondary wetland impacts.

The CAI permit application was deemed complete by EPD on August 31, 2020, and was scheduled for public hearing once PSP-20-02-056 was ready to proceed concurrently to the Board.

The project site is located on five separate parcels located east of Avalon Road and north of Hartzog Road. The Parcel IDs for the project are 29-24-27-0000-00-003, 29-24-27-0000-00-004, 29-24-27-0000-00-008, 29-24-27-0000-00-009 and 30-24-27-0000-00-011. The subject property is located in District 1.

The project site includes a mosaic of uplands, wetlands and surface waters, including the northeastern portion of Lake Gifford. The project cumulatively comprises 96.14 acres of uplands, 36.72 acres of Class I surface waters, 16.92 acres of Class I wetlands, 4.84 acres of Class II wetlands, 0.99 acre of Class III wetlands and 0.31 acre of Class III surface waters. The applicant has proposed to construct a single-family residential development consisting of 151 condominium units and 217 single-family lots with associated infrastructure. The available uplands have been utilized as much as practicable; however, due to the close proximity and location of the conservation areas throughout the project site, the proposed impacts are unavoidable. The majority of onsite conservation areas (including Lake Gifford) will remain undisturbed.

The 0.99-acre Class III wetland proposed for impact is a low quality system with a vegetative community comprised dominantly of Carolina willow.

The two linear Class III surface water features (SW-1 and SW-3) proposed for impact are also low quality and were historically excavated in uplands. SW-1 appears to have been partially excavated for fill to construct an adjacent access road and SW-3 is comprised of nearly 100% nuisance/exotic species.

The Class I surface water (SW-2) is to be impacted for the construction of the main entrance road off of Hartzog Road. This surface water was historically excavated for fill to construct an adjacent road abutting Lake Gifford. The area to be impacted is a small portion on the northern end that is primarily unvegetated.

The environmental assessment for this project included a survey for listed species. Gopher tortoises (*Gopherus polyphemus*) were found onsite and a Florida Fish and Wildlife Conservation Commission (FWC) permit will be required to relocate the tortoises prior to land clearing activities. In addition, sandhill cranes (*Grus canadensis*) were observed within the project area. Two adults and a juvenile sandhill crane were observed, and a survey for potential nesting habitat was recommended by the environmental consultant prior to any construction activities. EPD will require a copy of the FWC permit prior to approval of the mass grading or final construction plans. The project site is located within the federally listed sand skink (*Neoseps reynoldsi*) consultation area and includes suitable sand skink habitat. A sand skink survey was conducted by the environmental consultant in 2018 and sand skinks were not found onsite.

EPD staff has evaluated the proposed conservation area impacts in accordance with the applicable review criteria listed in Orange County Code Chapter 15, Article X. Pursuant to 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. Finally, pursuant to Section 15-396(3)(c), mitigation for Class III wetlands shall be allowed in all cases.

The applicant has designed the development program to avoid and minimize impacts to wetlands to the greatest extent possible, while working within the constraints of the available space. The applicant has designed the site so as to avoid impacts to Lake Gifford, the Class I wetland system abutting Lake Gifford, and the Class II wetland onsite. The impacts are limited to a low quality Class III wetland (0.99 acre), the two surface waters that were formerly excavated from uplands (0.04 acres and 0.27 acres), and to a historically disturbed portion of a Class I surface water (0.05 acre).

Additionally, the applicant maintains the Class I conservation area impact is necessary to access the northern portion of the project site and accommodate for lots on the east side of the road, with limited space between the high quality Class I wetland and the Class II wetland. Accordingly, based on the documentation and justifications provided, the applicant has demonstrated that the proposed site plan allows for reasonable use of the land, and that there are no other feasible or practical alternatives available to further minimize or eliminate impacts to the conservation areas. Therefore, the request meets the

criteria for approval and the project will maintain the overall environmental productivity of the Class I conservation area. The impacts to the remaining systems or portions thereof are minimal and will be offset with appropriate mitigation.

To offset the conservation area impacts, the applicant has proposed the preservation of 15.38 acres of wetlands at the Spring Grove Mitigation Tract. The mitigation area is part of a large 211-acre wetland system located in southwest Orange County. The proposed wetland impacts are located within the same drainage basin as the mitigation area, and the mitigation is appropriate and sufficient to offset adverse impacts to wetlands that will occur as a result of the proposed improvements.

Notification of the public hearing was sent via electronic correspondence to the applicant and authorized 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-20-03-026, 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 the Wetland Conservation Plan, Sheet C6.00, prepared by Poulos & Bennett and received by the Environmental Protection Division (EPD) on August 18, 2020.
4. Construction shall be completed in accordance with the site plans, Sheets C3.01, C4.01 and C6.00, prepared by Poulos & Bennett and received by EPD on August 18, 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.
5. The mitigation plan must be implemented in accordance with the 'Spring Grove Mitigation Plan' dated as received by EPD on July 13, 2020. The preservation area must total at least 15.38 acres in size.

6. Prior to initiating any construction within the wetlands, surface waters, or upland buffers that require mitigation, this permit requires the recording of a conservation easement (CE) in the public records of Orange County, and when applicable, notation of the CE on the corresponding plat. The CE must be dedicated to Orange County and cannot be recorded unless and until the CE is accepted and approved by EPD and the Orange County Real Estate Management Division (REM). The CE must include restrictions on the real property pursuant to Section 704.06, Florida Statutes (FS) and the requirements set forth below:
  - a. Within 30 days of issuance of this permit, the permit holder shall provide to EPD for review and written approval a copy of the surveyor's sketch and legal description of the area to be encumbered by the CE pursuant to the EPD approved mitigation plan. The Orange County Surveyor must approve the final sketch and legal description. The permit holder shall ensure that the CE is executed by the correct grantor who must hold sufficient record title to the land encumbered by the CE. Accordingly, when the permit holder submits the surveyor's sketch and legal description, the permit holder must contemporaneously submit current evidence of title of the proposed easement area to EPD. The evidence of title is subject to review and approval by REM.
  - b. If the impacts are to an upland defined as River Corridor Protection Zone (Chapter 15, Article XI, Section 15-443(1)), or to an upland buffer as defined by Chapter 15, Article XI, Section 15-442(f), or to a wetland or surface water for which mitigation is required and authorized to occur in discrete phases, the areas to be preserved to offset such impacts may be placed under a CE in phases, such that impacts are offset prior to the commencement of work within the phase that the impacts are permitted to occur. Such phasing of preservation can only occur if it has been proposed in the mitigation plan and approved by this permit. A surveyor's sketch and legal description of the area to be placed under CE must be submitted in accordance with paragraph (a) above prior to commencement of each phase.
  - c. The CE must be in a form approved by the Orange County Attorney's Office (OCAO) and REM. Consistent with Section 704.06 FS, the CE must prohibit all construction, including clearing, dredging, or filling, except that which this permit specifically authorizes. The CE must contain the provisions set forth in Section 704.06(1)(a) through (h), FS. The CE must contain provisions that grant the County the right to access and inspect the CE area, and to enforce the terms and conditions of the CE. Unless specifically prohibited by law, the CE must include a provision whereby the permit holder shall warrant title and agree to defend the same. The grantor cannot amend the CE without written approval by the County.
  - d. If the grantor of the CE is a partnership, the partnership must provide to EPD a partnership affidavit stating that the person executing the CE has the legal authority to convey an interest in the partnership land.

- e. If any mortgages or financial encumbrances exist on the land, the permit holder shall ensure an appropriate consent and joinder is executed subordinating the mortgage or financial interest to the CE, which must be reviewed and approved by the OCAO and REM. The consent and joinder of mortgagee must be recorded simultaneously with the CE in the public records of Orange County at the permit holder's sole expense.
  - f. Upon approval of the final executed documents by Orange County, the CE and its attachments must be recorded in the public records of Orange County, at the permit holder's sole expense.
  - g. At least 45 days prior to whichever comes first: (1) dredging, filling, or clearing of any wetland or surface water for which mitigation is required; (2) clearing any upland within the River Corridor Protection Area or any upland buffer as defined in Chapter 15, Article XI, Section 15-442(f); (3) the sale of any lot or parcel; (4) the recording of the subdivision plat; or (5) use of the infrastructure for its intended use, the permit holder shall submit to EPD a copy of the preliminary plat depicting the area to be encumbered by the CE.
  - h. If during the review of the submitted evidence of title, REM finds any encumbrances or irregularities that will render the proposed mitigation inadequate to offset the impact(s), the permit holder shall submit a revised mitigation plan for EPD staff to review and approve. The revised mitigation plan may require approval by the Board.
7. The mitigation area monitoring shall be conducted in accordance with the 'Spring Grove Mitigation Plan' narrative received by EPD on July 13, 2020.
  8. A baseline monitoring report that clearly describes site conditions within the preservation area must be submitted to EPD prior to initiation of any mitigation activities (e.g., removal of nuisance and/or exotic vegetation). The report must include, at a minimum the following information: site location, field sampling design, sampling methodology, GPS location of fixed transects, photographic documentation, fish and wildlife observations, hydrology, results and discussion.
  9. The permittee is required to monitor the preservation area and submit annual monitoring reports that contain the following information: site location, global positioning system (GPS) location of fixed transect(s), field sampling design, sampling methodology, photographic documentation, fish and wildlife observations, hydrology, results and discussion. If at the end of the five year monitoring period, the mitigation area is not meeting the monitoring success criteria, the permittee is required to provide a restoration plan or modified mitigation plan, and may be required to continue monitoring until success has been demonstrated.
  10. Conservation area signs shall be installed in accordance with the wetland conservation plan, 'Sheet C6.00,' prepared by Poulos & Bennett and received by EPD on August 18, 2020. The signs shall be installed prior to the Certificate of Completion.

11. Prior to beginning construction, the permittee must demarcate the limits of construction with orange safety fencing. Initial clearing shall include a path along the limit of construction to facilitate a visual limit of clearing for the installation of the orange safety fence and erosion control devices. After the initial clearing adjacent to the conservation areas is complete, a silt fence and orange safety fence must be installed along the limits of construction next to the conservation area boundaries and maintained throughout construction.
12. Surveys for sandhill crane nests must be conducted monthly in the onsite preserved wetlands immediately prior to any clearing or construction that occurs during the January to August breeding season. If there is any evidence of nesting during this period, the active sandhill crane nests must be buffered by a 400 foot no-construction zone to avoid disturbance by human activities. If nesting is discovered after construction has begun or if maintaining the recommended buffer is not possible, the permittee must contact the Florida Fish and Wildlife Conservation Commission (FWC) to discuss permitting requirements. A copy of any FWC permit or 'Biological Opinion' must be submitted to EPD.
13. 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.
14. 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.
15. 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.html>.
16. 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(70), 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).

17. 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 Florida Statutes (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:

18. 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.
19. 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.
20. 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.
21. 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.
22. 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.

23. 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.
24. 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.
25. 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.
26. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
27. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. Pursuant to Section 125.022 FS, the applicant shall obtain all other applicable state or federal permits before commencement of development.



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November 10, 2020 – Public Hearing

Horizon's West Village I – Withers PD, Parcels 11, 13, & 17 Conservation Area Impact Permit No. CAI-20-03-026

**ACTION REQUESTED:**     **Acceptance of the findings and recommendation of the Environmental Protection Division staff and approval of Conservation Area Impact Permit CAI-20-03-026 for the Horizon's West Village I – Withers PD, Parcels 11, 13, & 17 subject to the conditions listed in the staff report. District 1**

JW/DDJ: mg

Attachments