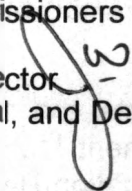


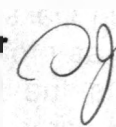


Interoffice Memorandum

October 22, 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 17, 2020 – Public Hearing  
SLF IV/Boyd Horizon West JV LLC Conservation Area Impact  
Permit Application No. CAI-19-07-038

The applicant, SLF IV/Boyd Horizon West JV, LLC, is requesting a Conservation Area Impact (CAI) permit to authorize direct impacts to Class I wetlands and surface waters in order to construct a new multi-family development and associated infrastructure. The project is located on New Independence Parkway in Winter Garden, FL 34787 and is informally known as the Shaw Daniels parcel. The Parcel ID Nos. are 21-23-27-0000-00-004, 21-23-27-0000-00-033, 21-23-27-0000-00-036, and 21-23-27-0000-00-039. The project is located in District 1.

The project area contains 4.14 acres of Class I wetlands, including a freshwater marsh and the shoreline fringe of Lake Hancock and 1.59 acres of Class I surface waters, including 1.2 acres of historically dredged ditches. The outer portion of wetlands and surface waters associated with Lake Hancock along the northern limits of the impact area have a typical edge-effect of low quality vegetation including several invasive exotic species; however, the interior portions are comprised of moderate to high quality native vegetation.

The applicant proposes to directly impact 2.86 acres of Class I wetlands and surface waters and 1.34 acres of secondary impacts in order to construct portions of a new multi-family development and associated infrastructure.

Environmental Protection Division (EPD) staff has evaluated the proposed impacts and site plan with the review criteria 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.

The applicant has made several plan revisions that reflect a reduction to wetland and surface waters impacts. Additionally, the applicant has proposed the use of retaining walls, which eliminates the need for side slopes and reduces the amount of impact, and will install a wildlife-friendly culvert to maintain a hydrologic connection and provide a safe crossing for wildlife to move from the interior wetlands to the shoreline wetlands of Lake Hancock.

As mitigation for the impacts, the applicant has proposed to purchase 1.3 herbaceous Uniform Mitigation Assessment Method mitigation credits from the Twin Oaks Mitigation Bank. The Twin Oaks Mitigation Bank is located within the same hydrologic basin. The mitigation plan, as proposed, offsets the impacts; however, in addition to the purchase of mitigation credits, the applicant has proposed to preserve 2.37 acres of Class I wetlands, replant the 1.28 acres of impacts associated with dredging for compensating storage with native wetland vegetation, and create 1.35 acres of Class I wetlands by excavation of a portion of the onsite uplands and planting of native wetland species.

The applicant is not proposing to use the preserved, dredged and replanted, or created wetlands as mitigation to offset the proposed impacts, but these areas will provide and/or replace wildlife habitat that is being impacted by the project. Finally, the applicant will install six wood duck boxes within the existing and created wetland areas to attract wood ducks to the area.

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 wetlands, and therefore the request meets the criteria for approval.

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.

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 recommends approval of CAI Permit No. CAI-19-07-038, 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 C-7.0' prepared by Kelly, Collins, & Gentry, Inc., received by the Environmental Protection Division (EPD) on September 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.
4. Prior to initiating any construction within wetlands or surface waters authorized for impact, or approval of construction or grading plans, EPD shall receive documentation from the Twin Oaks Mitigation Bank indicating that the purchase of 1.3 herbaceous Uniform Mitigation Assessment Method mitigation credits has been completed.
5. In the event that the permittee does not successfully complete the transaction to obtain the requisite 1.3 mitigation credits from the Twin Oaks 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.
6. Conservation areas shall be clearly marked with signage that identifies the wetland and upland buffer, as applicable. These signs, along with split rail fencing, retaining walls, and wood duck boxes shall be installed in the locations shown on the 'Planting Plan' prepared by Bio-Tech Consulting, Inc., received by EPD on September 18, 2020. The signs, fences, retaining walls, and wood duck boxes shall be installed prior to the Certificate of Completion, or platting, whichever first occurs.
7. The wetland dredge areas and wetland creation areas shall be constructed and replanted, and monitored with the wetland preservation areas, in accordance with the 'Planting Plan' and the 'Shaw Daniels Comprehensive Mitigation Plan' narrative prepared by Bio-Tech Consulting, Inc., dated as received by EPD on September 18, 2020. The wetland dredging, replanting, and creation must be completed prior to plat approval.
8. 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.
9. 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.
10. 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. 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.

11. 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).
12. 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:

13. 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.



14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. The permittee shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.
20. 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.
21. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.

22. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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-19-07-038 for SLF IV/Boyd Horizon West JV LLC subject to the conditions listed in the staff report. District 1**

JW/DDJ: mg

Attachments


# Conservation Area Impact Permit Request

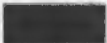


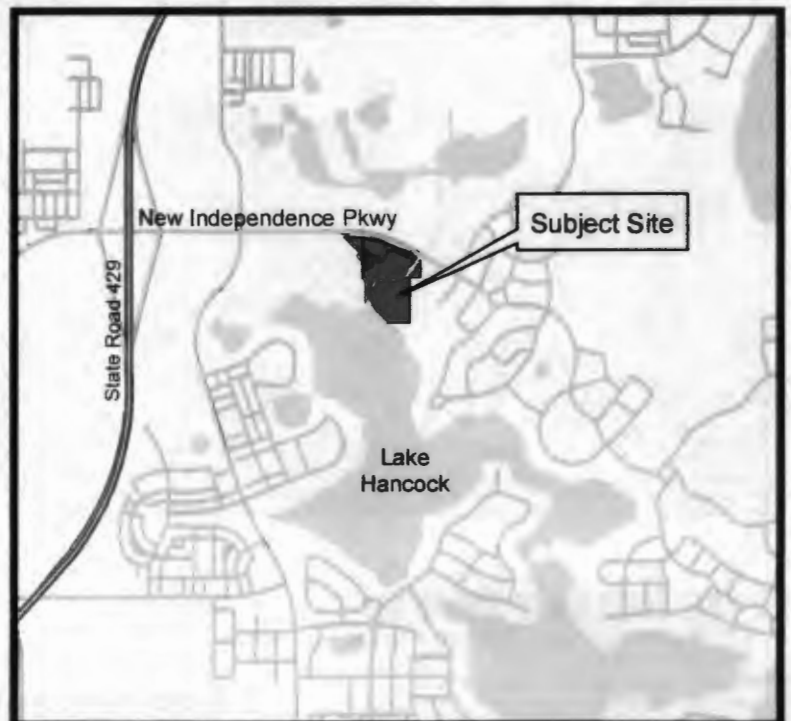
**Conservation Area Impact  
Permit Request  
CAI-19-07-038  
District #1**

**Applicant:** SLF IV/Boyd Horizon West JV LLC

**Parcel ID Nos.:** 21-23-27-0000-00-004  
21-23-27-0000-00-033  
21-23-27-0000-00-036  
21-23-27-0000-00-039

**Project Site** 

**Property Location** 

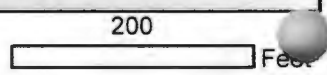




Source: Esri, Maxar, GeoEye, Earthstar, USGS, AeroGRID, IGN, and the GIS

**Legend**

- Shaw-Daniels Site
- NHWL (SSL Line)
- Dredge Impact Area ( 1.28 Ac.)
- Fill Impact (1.58 Acres)
- Secondary Impacts (1.34 Ac)



Project #:325-29  
 Produced By:LPM  
 Date: 9/11/2020

Shaw\_Daniels Site  
 Orange County, Florida  
 Figure  
 Direct-Secondary Impacts





Shaw\_Daniels Site  
Orange County, Florida  
Figure  
Post Development Habitats

200  
Feet

N  
Project #:325-29  
Produced By:LPM  
Date: 9/11/2020



**Legend**

- Shaw-Daniels Site
- Wood\_Duck\_Box (6)
- CE\_Signs
- Split\_Rail\_Fence
- Zone, Acres, Species**
- A : 1.1 : sand cordgrass (7,666)
- B : 1.53 : soft rush, canna (10,663)
- Proposed Retaining Wall

200 Feet



Project #:325-29  
 Produced By:LPM  
 Date: 9/18/2020

**Bio-Tech Consulting Inc.**  
 Environmental and Permitting Services  
 3025 E. South Street Orlando, FL 32803  
 Ph: 407-894-5969 Fax: 407-894-5970  
 www.bio-techconsulting.com

Shaw\_Daniels Site  
 Orange County, Florida  
 Figure  
 Planting Plan



## **Shaw Daniels Comprehensive Mitigation Plan Orange County, Florida**

### Twin Oaks Mitigation Bank

The Shaw Daniels proposed wetland impact areas have been inspected and evaluated by County Staff. The wetland function has been determined via the agreed upon UMAM scores. The Shaw Daniels project, as proposed, requires 1.58 acres of wetland and surface water fill impacts and 1.28 acres of wetland dredge impacts. Based on the current proposal, the project incurs a functional loss of -1.22 that will be mitigated for at just over a 1:1 ratio by the purchase of 1.3 herbaceous credits from the Twin Oaks Mitigation Bank. The project's purchase of mitigation credits provides long-term ecological value within regionally significant conservation lands, and thus guarantees no net loss of ecological function within the region. Please find the attached UMAM and reservation letter.

### On-Site Wetland Enhancement

The 1.28 acres of wetland dredge impacts associated with this project will be utilized for floodplain compensation areas. These areas occur along the fringe of Lake Hancock, as well as around the central wetland, and include 0.99 acres of wetland dredge and the 0.29 acres of wetland enhancement. Although both of these areas are being dredged to accommodate additional compensating storage, they have been differentiated by the level of exotic vegetation present. These zones of exotics are illustrated on the attached exhibit. These impacts could technically be categorized as "temporary" as the work proposed is only to lower the level of the substrate as a part of the compensating storage needs. However, in an effort to put forth the most comprehensive environmental plan, the applicant is viewing these areas as having a notable level of direct impact and is mitigating for those encroachments as noted above. These enhancement areas will be re-vegetated with herbaceous native species, to include soft rush (*Juncus effusus*), sand cordgrass (*Spartina bakeri*), and canna (*Canna flaccida*). Plantings will consist of bareroot specimens on 2.5-foot centers. A UMAM assessment of the on-site wetland enhancement area adds a +0.21 a Functional Value to the project. No mitigation credit is being requested from this on-site enhancement work.



### On-Site Wetland Creation

The 1.35 acres of wetland creation will occur within a portion of the subject site that is currently upland. This area is being excavated to provide additional floodplain compensation. The creation area will be excavated to an elevation adequate to address compensating storage and appropriate to support wetland vegetation. Herbaceous native species, to include including soft rush (*Juncus effusus*), sand cordgrass (*Spartina bakeri*), and canna (*Canna flaccida*), will be utilized in the planting of the compensating storage/creation area. Plantings will consist of bareroot specimens on 2.5-foot centers. A UMAM assessment of the on-site wetland creation area adds a +0.34 Functional Value to the project. No mitigation credit is being requested from this on-site enhancement work.

### On-Site Preservation

In the postconstruction condition, the central wetland will remain. This is a marsh system that is approximately 2.37 acres in size. Common vegetation found in this system includes water-lilies (*Nymphaea odorata*), pickerelweed (*Pontederia cordata*), spikerush (*Eleocharis* sp.), arrowhead (*Sagittaria lancifolia*), torpedograss (*Panicum repens*), marsh pennywort (*Hydrocotyle umbellata*), primrose willow (*Ludwigia peruviana*), Cuban bulrush (*Oxycaryum cubense*), marsh fern (*Thelypteris palustris*), maidencane (*Panicum hemitomon*), buttonbush (*Cephalanthus occidentalis*), wax myrtle (*Myrica cerifera*), smartweed (*Polygonum punctatum*), St. Johns wort (*Hypericum fasciculatum*), Carolina willow (*Salix caroliniana*), and elderberry (*Sambucus canadensis*). In general, this system is in decent condition, although the presence of nuisance and exotic vegetation poses concerns about the long-term health of the system. The applicant is proposing to conduct maintenance and monitoring within this area, in conjunction with the wetland enhancement and creation efforts. No plantings are proposed for this area. The maintenance of the preserved wetlands will provide an additional functional lift of +0.03 per the UMAM evaluation. No mitigation credit is being requested from this preservation effort.

### Maintenance

Maintenance events will be conducted on a monthly basis for one (1) year to control nuisance and exotic vegetation within the all wetland areas (i.e. preserved, enhanced, and created). The maintenance of the on-site areas will consist of the application of approved herbicide and/or hand removal methods. Maintenance events will be continued beyond the first year at a quarterly or on an as-needed basis as site conditions warrant for years two (2) and three (3) to coincide with the monitoring regime.

## Monitoring

The wetland preservation, creation and enhancement areas will be qualitatively monitored for a period of three (3) years. The monitoring events will occur on a semi-annual basis for the entire monitoring period. Prior to the initiation of the three years of monitoring, a baseline monitoring event will occur and a subsequent report will be provided to the County. The semi-annual monitoring events will be documented in annual reports submitted to the County.

Monitoring locations will be established throughout the wetland areas and utilized for the collection of sampling data. Each location will be a 50-foot transect and will have two (2) monitoring stations positioned at the beginning and the end of the transect. Monitoring will consist of a qualitative assessment of vegetation within the general vicinity of each monitoring station. Additionally, photo stations will be established at each monitoring station to provide photographic documentation of the monitored areas. Data collected from these monitoring stations will include a vegetative species listing, estimated percent coverage of species, wildlife utilization, and a description of any problems encountered during the evaluation and proposed solutions.

Success criteria is as follows:

- 1) Coverage of native desirable species will not be less than 90%\*
- 2) Coverage of exotic species shall not exceed 5% and coverage of nuisance plant species shall not exceed 10% of total cover between maintenance activities.

***\*Portions of the creation/enhancement area are located within the Duke powerline easement. The applicant will not be responsible for any damage to plantings that may occur by Duke Energy as part of their maintenance activities.***

## Ancillary Efforts

To help ensure the long-term viability and protection of the on-site wetland areas (i.e. preserved, enhanced and created), the applicant will utilize conservation signage and split rail fencing. The signage will be located at 50-foot intervals along the lakeshore/enhancement area, and the around the central wetland/creation area/enhancement areas. The split rail fencing will be placed around the central wetland/creation area/enhancement areas where possible. There may be areas associated with the powerline easement that preclude the applicant's ability to install such fencing.

In addition to the signage and fencing, the applicant will make adjustments to the already proposed 4' by 6' box culvert that will be located beneath the road that is situated between the lake and the central wetland. The culvert is designed to be set just below the seasonal high elevation of the lake and will be completely dry much of the year. During wetter times, the culvert will be only be inundated a few inches. The ramp design will extend from both sides of the weir at a 5:1 grade and will be two feet wide (see attached). This will allow for a variety of small and medium sized wildlife to move between the two areas while avoiding the road itself. In addition, wildlife crossings signs will be located on the road, in the vicinity of the culvert.

To supplement wildlife utilization of the lakeshore and enhancement/creation areas, the applicant will install six (6) Wood Duck nesting boxes. The nesting boxes will be installed within the interior marsh and along the lakeshore on 4X4 posts at least 3 feet above the normal high water elevation, facing south or west. The Wood Duck nesting boxes will provide additional nesting habitat for the local and regional population that provides a level of safety from potential predators.

#### Summary

The purchase of mitigation credits from the Twin Oaks Mitigation Bank fully off-sets the project's functional loss, plus an extra 0.08 units of functional lift. The project will provide an additional 2.63 acres of on-site wetland creation/enhancement, as well as 2.37 acres of wetland preservation. This collective of mitigative remedies provides a greater ecological value than afforded by the site's current condition. The extra bank credit, on-site creation/enhancement and preservation yields an additional +.66 Functional Value to the project, above and beyond the purchase of the 1.22 units of functional loss, making the implementation of this project, as proposed, an overall ecological benefit to the region.