



United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960



September 14, 2006

RECEIVED

Colonel Paul L. Grosskruger
District Engineer
U.S. Army Corps of Engineers
701 San Marco Boulevard, Room 372
Jacksonville, Florida 32207-8175

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Service Federal Activity Code: 41420-2006-FA-0709

Section 7 Activity Code: 41420-2006-F-0294

Corps Application No.: SAJ-2006-1652 (MEP)

Date Received: May 2, 2006

Formal Consultation Initiation Date: May 24, 2006

Applicant: Bayonne Development, LLC

Project: Grande Bay

County: Sarasota

Dear Colonel Grosskruger:

This document transmits the Fish and Wildlife Service's (Service) biological opinion for a multi-family and commercial development known as Angler's Paradise (project) which is located in Lee County, Florida, and its effects on the bald eagle (*Haliaeetus leucocephalus*) in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 et seq.).

This biological opinion is based on information available on nest SA-040 provided to the U.S. Army Corps of Engineers' (Corps), a Bald Eagle Management Plan (BEMP), and biological analyses prepared by the environmental consultant for this project, telephone conversations, meetings, and other sources of information. A complete administrative record of this consultation is on file in the South Florida Ecological Services Office, Vero Beach, Florida.

Consultation History

On March 24, 2005, the applicant attended a meeting with Service staff at the South Florida Ecological Services Office in Vero Beach to discuss the proposed project and compliance pursuant to the *Habitat Management Guidelines for the Bald Eagle in the Southeast Region* (1987), the *Clearance to Proceed with Construction Activities Adjacent to Bald Eagle Nests* (2 December 2005), and *Bald Eagle Monitoring Guidelines* (September 2002).

On 17 February 2006, the applicant submitted a Pre-Construction Notification (PCN) for a Nationwide Permit 39 to the Corps. Included in the PCN was a discussion of potential effects of

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the project on the federally listed wood stork (*Mycteria americana*), eastern indigo snake (*Drymarchon corais couperi*), Florida scrub-jay (*Aphelocoma coerulescens*), and bald eagle. The PCN also included *Grande Bay Bald Eagle Territory SA-040 Management Plan And Request for Incidental Take Statement* prepared for the applicant by BRA.

On May 2, 2006, the Corps determined the project "may affect" the bald eagle and requested initiation of formal consultation on the potential effects of the project on nesting bald eagles. By the same correspondence, the Corps provided a "may affect, but not likely to adversely affect" determination for the wood stork and indigo snake (*Drymarchon corais*) and "no effect" for the Florida scrub-jay (*Aphelocoma coerulescens*).

On May 24, 2006, the Service issued a formal consultation initiation letter to the Corps. By the same correspondence, the Service concurred with the Corps' determination for the wood stork and indigo snake and supported the "no effect" determination for the Florida scrub-jay.

BIOLOGICAL OPINION

DESCRIPTION OF PROPOSED ACTION

The applicant proposes to construct a multi-story, multi-family condominium building on a 13-acre parcel and a mixed-use development and associated infrastructure on an 18-acre adjacent parcel. The multi-family condominium building will be known as Residence at Grande Bay. The mixed-use development will be known as the Shoppes at Grande Bay. The Shoppes at Grande Bay development is bounded on the south by undeveloped land, a Sarasota County preserve acquired through the County's Environmentally Sensitive Lands program, and a church; by U.S. Highway 41 to the northeast; and by South Holiday Drive and residential development to the west. The Residence at Grande Bay is located south of the 18-acre tract and is joined to its southwestern corner for approximately 133 feet along its extreme northeastern corner. The 13-acre parcel is bounded by undeveloped land to the south, by residential development to the north, by Little Sarasota Bay to the west, and by Sarasota County-acquired environmentally sensitive lands to the east (Figure 1). The Grande Bay project is located on the south side of U.S. Highway 41 in Section 28, Township 37 South, Range 18 East, Sarasota County, Florida.

In March 2002 the environmental consultant for this project observed a newly constructed bald eagle (*Haliaeetus leucocephalus*) nest on adjacent Sarasota County property. The Florida Fish and Wildlife Conservation Commission (FWC) has assigned the nest and territory number SA-040. The territory is currently active and has been used each nesting season since 2002.

The typical 750-foot primary protection zone about the nest encompasses approximately 7.2 acres (37.9%) of the 18-acre subject parcel and 2.8 acres (21.5%) of the 13-acre parcel (Figure 2). The typical 1500-foot secondary protection zone encompasses an additional 11.0 acres (57.9% of the parcel) of the 18-acre parcel and 10.2 acres (78.5%) of the 13-acre tract. With the exception of a <0.25-acre encroachment for sidewalks and a portion of a roadway, only surface water management system, wetland mitigation and underground utilities are proposed in the 750-foot Primary Protection Zone. The majority of the proposed project occurs within the 1500-foot Secondary Protection Zone around the nest (Figure 2).

A considerable amount of anthropogenic activity occurs around nest SA-040. The nest is located 750 feet from the four-lane, divided U.S. Highway 41. An existing church and daycare center with associated outdoor activities is located approximately 300 feet east of the nest.

The applicant has carefully considered all practicable design alternatives and reasonable and prudent measures that would enable construction of the multi-story residential and mixed-use buildings of the project while minimizing the risk of incidental take. Details about these minimization measures are contained in the *Territory Management Plan* submitted by the applicant. However, even with the implementation of such measures, a potential risk of disturbance may remain once building construction has started, as it will be impossible to suspend vertical construction activities if they extend into the breeding season. The proposed practicable design alternatives are consistent with the *Clearance to Proceed with Construction Activities Adjacent to Bald Eagle Nests* (Service 2006). In addition to the spatial measures taken to minimize the risk of incidental take, the applicant proposes:

1. A stormwater management lake will be constructed north of nest SA-040 as a buffer from residential and commercial buildings. The stormwater lake will be constructed during the non-nesting season (*i.e.*, subsequent to fledging, if nest SA-040 was active, or after February 1, if there is no evidence of breeding activity).
2. To minimize and compensate for potential adverse effects to bald eagles in the action area and the bald eagle population in south Florida, the applicant proposes to provide a long-term conservation benefit. The applicant has agreed to contribute \$35,100 to help support and augment funds available to the FWC to undertake more aerial reconnaissance of bald eagle nests for the regional population in south Florida, which includes Sarasota County. The amount of \$35,100 was determined based on the following calculation:

$$\begin{array}{rclclcl} \$650/\text{hour} & & 18 \text{ hours (estimated)} & & & & \\ \text{(includes salary} & \text{X} & \text{time to fly Sarasota} & \text{X} & 3 & = & \$35,100 \\ \text{and flight costs)} & & \text{County per year)} & & \text{years} & & \end{array}$$

The applicant will contribute \$35,100 to FWC within 10 business days of issuance of the Corps permit. The applicant will notify the Service on this transaction by sending the Service a copy of the deposit form and check to document the delivery of payment to the FWC.

STATUS OF THE SPECIES

This section summarizes the bald eagle biology and ecology as well as information regarding the status and trends of the bald eagle throughout its entire range. The Service uses this information to assess whether a Federal action is likely to jeopardize the continued existence of above mentioned species. The "Environmental Baseline" section summarizes information on status and trends of the bald eagle specifically within the action area. This summary provides the foundation for the Service's assessment of the effects of the proposed action, as presented in the "Effects of the Action" section.

The bald eagle was listed as endangered on March 11, 1967, due to significant population declines (32 FR 4001). On July 12, 1995, the bald eagle's status was downgraded from endangered to threatened, due to substantial population increases following conservation efforts, including the banning of DDT and other organochlorine pesticides (60 FR 36010). No critical habitat has been designated for this species. At the time of this writing, the Service is evaluating public comment on the proposed delisting of the bald eagle under the Act, addition of a definition of "disturb" to the Bald and Golden Eagle Protection Act (BGEPA), and implementation of National Bald Eagle Management Guidelines.

Distribution

The bald eagle was historically found throughout the North American continent from the Aleutian Islands and western Alaska to the Maritime Provinces of Canada and south to the Florida Keys, the Gulf Coast, and Baja California (Curnutt 1996). Apart from Alaska, most nesting bald eagles were found in Florida, the Chesapeake Bay area, the Great Lakes region, Maine, and the Pacific Northwest. In Florida, eagles were historically found throughout the State, although they were probably most abundant along large rivers and lakes. Eagles were probably never numerous in the panhandle or extreme southeastern Florida. Today, bald eagle nesting is prevalent along the south coast, the Gulf Coast from Pinellas County north to the Suwannee River, the St. Johns/Oklawaha River basins, and the Kissimmee River valley including Polk and Osceola Counties (Curnutt 1996).

Habitat

Bald eagles are considered a water-dependent species typically found near estuaries, large lakes, reservoirs, major rivers and some seacoast habitats (Service 1999). Their distribution is influenced by the availability of suitable nest and perch sites near large, open water-bodies, typically with high amounts of water-to-land edge.

Nesting habitat includes the nest tree, perch and roost sites, and adjacent high use areas, but does not include foraging areas. The nest, perch, roost sites, and use areas around the nest tree comprise the nesting territory. The size and shape of a defended nesting territory varies greatly depending on the terrain, vegetation, food availability, and eagle density in the area. Generally, bald eagle nesting habitat is adjacent to, or near large bodies of water that are used for foraging (Service 1999). Nest sites must also provide good visibility, and a clear flight path to the nest (Montana Bald Eagle Working Group 1991).

In Florida, nests are often in the ecotone between forest and marsh or water, and are constructed in dominant or co-dominant living pines (*Pinus spp.*) or bald cypress (*Taxodium distichum*) (McEwan and Hirth 1979). About 10 percent of eagle nests are located in dead pine trees while two to three percent occur in other species such as Australian pine (*Casuarina equisetifolia*) and live oak (*Quercus virginiana*). The stature of nest trees decreases from north to south (Wood et al. 1989) and in extreme southwest Florida, eagles nest in black (*Avicennia germinans*) and red mangroves (*Rhizophora mangle*), half of which are snags (Curnutt and Robertson 1994). Nest trees in South Florida are smaller and shorter than reported elsewhere; however, eagles nesting here select the largest trees available (Wood et al. 1989, Hardesty 1991). The small size of nest trees in South Florida relative to other nest sites throughout its range is due to the naturally smaller stature of *Pinus elliottii*, *P. taeda*, *P. palustris*, and *P. clausa* in south Florida.

Reproduction

Most breeding eagles construct nests within several hundred yards of open water (Service 1998). In Florida, most nests are located within 2 miles of open water, substantially further than other reported distances (McEwan and Hirth 1979, Wood *et al.* 1989).

In the southeastern United States bald eagles nest once a year, with the mated pair returning to the same breeding/nest area beginning in early September or October, refurbishing their nest during November and December, and egg laying in December or January. Depending on the geographic area, incubation may be initiated as early as November or as late as March, with the eggs requiring about 35 days for incubation. Clutches usually consist of one or two eggs, but occasionally three are laid. In Florida, the eaglets will grow to the size of the adult birds within 10 to 12 weeks, at which time they typically fledge (Wood 1997). Parental care may extend four to 6 weeks after fledging even though young eaglets are fully developed and may not remain at the nest after fledging.

The immature bald eagle lacks the white head, neck and tail, and has a dark beak and dark eyes. The overall color of young eaglets is dark to light brown with light-colored base feathers that give a blotchy appearance. The white head and tail plumage may not appear complete until the eagle is 4 to 5 years of age.

Foraging

The bald eagle is an opportunistic feeder. Accordingly, its diet varies tremendously, depending on the time of year and habitat. Most studies indicate that fish are an important component of the eagle's diet, while birds and mammals account for the bulk of the remaining foods (Johnsgard 1990). During the winter, reduced availability of prey resulting from frozen waters require interior-based eagle populations to switch from a predominantly fish diet to one of birds and mammals. Carrion is taken by many eagles and is also a substantial portion of the diet, especially for coastal eagles dependent on post-spawning salmonids. Non-coastal populations may also rely heavily on carrion particularly during the late winter and early spring.

In the southeastern United States the bulk of the diet is fish. Broley (1947) found catfish (*Ictalurus spp.*), mullet, and turtles to be the most common food items found at nests in Florida. He also found that the variety of prey items differ among individual pairs. McEwan (1977) reported 79 percent fish and 17 percent bird prey, by occurrence, based on 788 animal remains recovered from nests. Of these, the dominant items were catfish and the American coot (*Fulica americana*).

Movements

Adult birds in coastal Alaska, Canada, the Pacific Northwest, Florida, and the Chesapeake Bay areas do not migrate, although dispersal of young may occur seasonally from some of these areas. Juvenile birds fledged in Florida are highly migratory, with more than one-third of the recoveries made 1,000 miles or more north of Florida, all during the non-nesting season (Broley 1947). If paired, it is assumed these birds remain in Florida, as do most other paired adults. If

not paired, it is not clear whether these birds continue to migrate north during summer or remain in Florida with the breeding adults. Most radio-collared juveniles return to nesting areas each year, but a small proportion remain away for 2 to 3 years.

In Florida, bald eagles breed and nest during the temperate winter. Contrary to changes in habitat use exhibited by northern U.S. bald eagle populations, eagles in the Southern United States do not substantially alter habitat use throughout the year. Some adults may remain in and defend their nesting territory outside of the breeding season (Palmer 1988), use or defend portions of their territory, or disperse and congregate at predictable food sources such as landfills. Of those adults that do not maintain territories throughout the year, most are not thought to leave the State. Conversely, following fledging, many juvenile eagles disperse north and summer from along the Atlantic Coast west to the Appalachian Mountains and north as far as Canada (Broley 1947, Wood and Callopy 1995).

Status and trends

Bald eagle nesting in Florida has been widely studied and published accounts are available from a variety of sources. Broley (1947) was the first to document a decline in eagle nesting in the late 1940s. A further decline from 73 to 43 active nesting areas was reported for west central Florida between 1936 and 1956. Howell (1973) reported a decline in nesting around Merritt Island from 24 nests in 1935 to four nests in 1971. An excellent summary was provided by Peterson and Robertson (1978), in which they characterized the bald eagle population of the 1970s as less than 50 percent of historic numbers with continued, yet slow decreases.

In the early 1950s, State natural resource agencies, and conservation organizations initiated surveys for nesting bald eagles which revealed that bald eagle numbers declined from historic numbers in many locations. A nationwide survey by the Service, several State wildlife agencies, and conservation groups in 1974 indicated eagle numbers and their reproductive success in certain areas were low enough to warrant protective actions.

In Florida, bald eagle nesting and productivity has increased dramatically since the early 1970s. Florida currently supports the highest number of breeding eagles of any southeastern state, supporting approximately 70 percent of the occupied territories in this region (Nesbitt 1995). Although numbers and productivity of bald eagles are increasing in Florida, concerns remain about the cumulative impacts associated with continued agricultural, residential, and commercial development (Wood 1987, Nesbitt 1995).

As shown in the table below, there has been a steady increase in the number of bald eagle nests in Florida since 1982.

YEAR	No. OF NESTS
1982	340
1984	375
1987	391
1988	399
1989	439
1990	535

YEAR	No. OF NESTS
1991	601
1992	652
1993	667
1994	764
1995	831
1996	847
1997	912
1998	980
1999	1,043
2000	1,069
2001	1,102
2002	1,133
2003	1,133

Threats

A primary threat to bald eagles after World War II was the widespread use of the pesticide DDT for mosquito control (Broley 1950). It was sprayed directly into wetlands, entered the food chain, and resulted in eggshell thinning. This caused massive reproduction failure which became evident in the 1960s. Peterson and Robertson (1978) indicated that the eagle population decreased by 50 percent in a 30-year period. In response, the Federal Government banned the use of DDT in 1972.

A major threat to eagles remains habitat loss and degradation from human alteration of the environment (Heinzman 1961, 1962 and G. Smith 1969). This is especially true along coasts and waterways where development has increased. An additional hazard to eagles occurs predominantly in the western U.S., and involves death from lead and chemical poisoning. Lead poisoning originates from lead shot that remains in dead or dying birds, and chemical poisoning from the intentional poisoning of nuisance animals. The effects to the eagles are secondary.

ENVIRONMENTAL BASELINE

Status of the species within the action area

The action area is defined as the entire Grande Bay project site and areas including the protection zones of nest SA-040. In March 2002 the consultant for the applicant observed a newly constructed bald eagle nest on adjacent Sarasota County property. The FWC assigned the nest and territory number SA-040. The territory is currently active and has been used each nesting season since 2002.

Factors affecting the species within the action area

The project site is located on the southwest side of U.S. Highway 41. The project parcel is bordered on the south by Sarasota County preservation land, and a church, Holiday Drive, and residential development to the northeast. The bald eagle nest is located on the grounds of the Sarasota County Preserve.

The bald eagle nest could be potentially disturbed by outdoor activities outside an existing church and daycare center within about 300 feet east of the nest. However, it appears the church predates the construction of the eagle nest at its current location. All areas surrounding the project parcel are either developed or are labeled as conservation lands, which are unlikely to be converted to other uses. The proposed action is the only potential disturbance likely to occur within the action area.

EFFECTS OF THE ACTION

This section includes an analysis of the direct and indirect effects of the proposed action on the species and critical habitat and its interrelated and interdependent activities. To determine whether the proposed action is likely to jeopardize the continued existence of threatened or endangered species in the Action Area, we focus on consequences of the proposed action that affect rates of birth, death, immigration, and emigration because the probability of extinction in plant and animal populations is most sensitive to changes in these areas.

Factors to be considered

Individual bald eagles react differently to human activities, but it has become clear as numbers of nesting bald eagles increase in Florida that they likely are much more adaptive to human activities, habitat alterations, and what previously was assumed to be disturbance than biologists originally perceived. The increase in population numbers likely is due, in part, to the fact that survival rates and reproductive performance has responded under the management and conservation efforts of the past 3 decades. It also is due to the presence of adequate nesting habitat or structures, sufficient food sources for rearing young in some necessary proximity nesting sites, and an existing degree of protection from human related disturbance that is less than originally perceived but yet not fully understood or measurable. This reality has become increasingly more evident as bald eagles have constructed new nests and successfully fledged young in conjunction with established and on-going residential developments during recent nesting seasons, especially in the south Florida area. The project exemplifies this apparent ability on the part of bald eagles in Florida to adapt and utilize nesting habitats in close proximity to human activities and land uses.

Analysis for the effects of the action

Beneficial Effects - To minimize and compensate for potential adverse effects to bald eagles in the action area and the bald eagle population in south Florida, the applicant proposes to provide a long-term conservation benefit. The applicant has agreed to contribute \$35,100 to help support and augment funds available to the FWC to undertake more aerial reconnaissance of bald eagle nests for the regional population in south Florida, which includes Sarasota County.

Direct Effects - Bald eagles occupying the action area are likely to be adversely affected by the proposed action. The project may result in direct "take" of the eagles through harm and harassment as a result of the noise and disturbance generated from site work, construction of homes and infrastructure, and increased human activities after the project has been constructed. These direct effects could cause the eagles to abandon the nest prior to egg laying, abandon the nest while eggs are in the nest, which would result in embryo mortality, or abandon the nest when chicks are in the nest, which would result in chick mortality.

The construction of nest SA-040 near an existing church and daycare, and active roads makes it difficult to interpret the associated biology and predict the tolerance of these individual bald eagles to human disturbance from the proposed project. The project generally proposes multi-family residential and commercial construction within 750 feet of the nest tree. The immediate area surrounding the nest tree is presently undeveloped land owned by Sarasota County. It is anticipated the restrictions placed on construction activities during the nesting season will reduce the effects of construction-related disturbance on this nesting pair.

Interrelated and Interdependent Actions

There are no interrelated or interdependent actions associated with the proposed action expected to impact bald eagles.

Indirect Effects - Indirect effects are caused by or result from the proposed action, are later in time, and are reasonably certain to occur. Indirect effects may occur outside the area directly affected by the action. Indirect effects may include other Federal actions that have not undergone section 7 consultation, but will result from the action under consideration. The types of indirect effects that could result in harm or harassment to the bald eagles from the proposed action could include the following:

- (1) The noise and other activities associated with the development and later occupancy of houses, (landscaping equipment) and access roads (automobiles, garbage trucks, and motorcycles) may potentially disturb the eagles nesting at nest SA-040. However, the eagles at nest SA-040 have been reproductively successful in past years while nesting in close proximity of an existing church and daycare and U.S. Highway 41. The given the distance and vegetative buffer between the proposed construction work and nest SA-040 it can be reasonably assumed this eagle pair can tolerate some levels of noise and visual disturbances associated with the construction of Grande Bay.
- (2) The increased artificial lighting from the proposed residential development may adversely affect the bald eagle. Street and house lighting is expected to create a glare. However, visual disturbances will be buffered by the 750-foot screen of native vegetative screen between the nest and project site.
- (3) Human activities within close proximity to the eagle nest tree may affect the eagles nesting at nest SA-040. Expected events include pedestrian traffic associated with commercial and residential buildings in close proximity to the nest. However, a stormwater management lake will be constructed between the buildings and nest SA-040 which will provide a buffer from residential and commercial buildings. It can be reasonably assumed the stormwater management lake will deter pedestrians from approaching the nest area during the nesting season. The nest tree is located in a natural area managed by Sarasota County. These disturbances have been occurring and perhaps will continue to occur before and after the initiation and completion of the Grande Bay Project.
- (4) Future development in the bald eagle protection area may disturb the nesting eagles. Bald eagle nest SA-040 is located on an undeveloped property adjacent to the project site. This

property is managed as recreation area by Sarasota County and it is unlikely to be developed. Any future development proposed within this bald eagle's protection zones will require coordination with the Service. It is expected the potential effects of any future action proposed within this nest's protection zones are minimized through the process of consultation with the Service.

These indirect effects could cause the eagles to abandon the nest prior to egg laying, abandon the nest while eggs are in the nest, which would result in embryo mortality, or abandon the nest when chicks are in the nest, which would result in chick mortality. However, the measures proposed are likely to minimize the indirect effects of noise, artificial lighting, human activities near the nest, and future development on the nesting eagles.

Species Response to the Proposed Action

Bald eagles generally are more vulnerable to disturbance early in the nesting season, *i.e.*, during courtship, nest building, egg laying, incubation, and brooding (roughly the first 12 weeks of the nesting cycle), and disturbance during this critical period may lead to nest abandonment and/or chilled or overheated eggs or young. Human activity near the nest later in the nesting cycle may cause the eaglet(s) to fledge prematurely, thereby reducing the likelihood of fledgling survival. The Service believes human activity, as outlined in the applicant's BEMP and at the proposed conservation measures in the site plan, will help reduce the probability of resulting in one or more of these negative effects.

In spite of conservation measures proposed, project implementation may result in the eventual abandonment of nest SA-040. The loss of productivity (assuming nest productivity equaled the 10-year statewide average of 1.57) would represent about 0.002 percent of the average annual statewide bald eagle production (Nesbitt 1999). Disturbance associated with the project could result in an immediate one-time abandonment of the nest site based on the construction activities.

Species response to the proposed action

The bald eagle population has recovered in the lower 48 states. Threats to the species have been reduced or eliminated, and reproductive success has significantly increased. The eagle pair at the action area is located closer to a church and daycare center than to the proposed construction. The church and daycare were present when this eagle pair built a nest in its current location. Accordingly, this eagle pair is likely not to respond negatively to the proposed action.

CUMMULATIVE EFFECTS

Cumulative effects include the effects of future State, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. The Service has considered cumulative effects of this project on this eagle nest and, in this instance, there are no cumulative effects.

CONCLUSION

After reviewing the current status of the bald eagle, the environmental baseline for the action area, the effects of the proposed action and the cumulative effects, it is the Service's biological

opinion the project as proposed, is not likely to jeopardize the continued existence of bald eagles. No critical habitat has been designated for the bald eagle; therefore, none will be affected.

Since 1982, the number of bald eagle nests in Florida has more than doubled. While human disturbance may lead to abandonment of this nest, the eagles will probably build a new nest elsewhere. The loss of this nest, including eggs or chicks, will not appreciably affect the overall survival and recovery of the bald eagle in Florida.

INCIDENTAL TAKE STATEMENT

Sections 4(d) and 9 of the Act, as amended, prohibit taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. "Harm" and "harass" are further defined in Service regulations (50 CFR 17.3). "Harm" is defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding or sheltering. "Harass" is defined as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering.

Under the terms of sections 7(b)(4) and 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement. The measures described below are non-discretionary, and must be implemented by the agency so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, in order for the exemption in section 7(o)(2) to apply. The Federal agency has a continuing responsibility to regulate the activity that is covered by this incidental take statement. If the agency (1) fails to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

AMOUNT OR EXTENT OF TAKE

The Service has reviewed the biological information for this species, information presented by the applicant's consultants, and other available information relevant to this action, and based on our review, incidental take, in the form of harm or harassment, is anticipated for the adult bald eagles, their eggs or their young at the SA-040 nest. Harm or harassment may result in the eagles abandoning the nest prior to egg laying, abandoning the nest while eggs are in the nest, which would result in embryo mortality or abandoning the nest when chicks are in the nest, which would result in chick mortality. Incidental take as described above may occur during the 2006-2007 nesting season and/or subsequent nesting seasons for the life of the project. Nesbitt (1995) analyzed Florida bald eagle nesting data collected from 1973 through 1995 and reported an average of 1.05 bald eagle chicks produced per nesting territory. Using Nesbitt's estimation of bald eagle productivity, the project may result in the take of 1.05 nestlings per year, for those nesting seasons occurring between the time of abandonment and construction a new nest.

EFFECT OF THE TAKE

In the accompanying biological opinion, the Service determined this level of anticipated take is not likely to result in jeopardy to the species.

REASONABLE AND PRUDENT MEASURES

When providing an incidental take statement, the Service is required to give reasonable and prudent measures it considers necessary or appropriate to minimize the take, along with terms and conditions that must be complied with to implement the reasonable and prudent measures. Furthermore, the Service must also specify procedures to be used to handle or dispose of any individuals taken. The Service believes the following reasonable and prudent measures are necessary and appropriate to reduce take and to minimize the direct and indirect effects of the proposed project on the bald eagles, their eggs or their young, and their nesting territory:

The applicant shall implement the following conditions:

For the duration of the project, the applicant must take all necessary steps to minimize the potential for incidental take of bald eagles during each nesting season. During the construction of the project, the applicant must make reasonable effort to prolong the integrity of the bald eagle nest tree, the nest, and the surrounding habitat. Per the guidance in the *Clearance to Proceed with Construction Activities Adjacent to Bald Eagle Nests* (Service 2006), no monitoring of the eagle nest is necessary for projects occurring beyond 660 feet from the nest.

TERMS AND CONDITIONS

To implement the above reasonable and prudent measures, the Service has outlined the following terms and conditions for incidental take. In accordance with the Interagency Cooperation Regulation (50 CFR 402), these terms and conditions must be complied with to implement the reasonable and prudent measure(s) for incidental take.

1. A stormwater management lake will be constructed north of nest SA-040 as a buffer from residential and commercial buildings. The stormwater lake will be constructed during the non-nesting season (*i.e.*, subsequent to fledging, if nest SA-040 was active, or after February 1, if there is no evidence of breeding activity).
2. To minimize and compensate for potential adverse effects to bald eagles in the action area and the bald eagle population in south Florida, the applicant proposes to provide a long-term conservation benefit. The applicant has agreed to contribute \$35,100 to help support and augment funds available to the FWC to undertake more aerial reconnaissance of bald eagle nests for the regional population in south Florida, which includes Sarasota County. The amount of \$35,100 was determined based on the following calculation:

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The applicant will contribute \$35,100 to FWC within 10 business days of issuance of the Corps permit. The applicant will notify the Service on this transaction by sending the Service a copy of the deposit form and check to document the delivery of payment to the FWC.

If a dead, injured or sick bald eagle is found at the project site, the initial notification must be made to the Service's South Florida Ecological Services Office immediately at 772-562-3909. The reasonable and prudent measures with their implementing terms and conditions are designated to minimize the impact of individual take that might otherwise result from the proposed action. The Service believes no more than 1.05 nestling, per-year, will be incidentally taken as a result of the proposed action. If, during the course of the action, this level of incidental take is exceeded, such incidental take represents new information requiring initiation of consultation and review of the reasonable and prudent measures provided. The Federal agency must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modifications of the reasonable and prudent measure.

COORDINATION OF INCIDENTAL TAKE STATEMENT WITH OTHER LAWS, REGULATIONS, AND POLICIES

To the extent that this statement concludes that take of any threatened or endangered species of migratory bird will result from the agency action for which consultation is being made, the Service will not refer the incidental take of any such migratory bird or bald eagle for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712), or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668-668d), if such take is in compliance with the terms and conditions (including amount and/or number) specified herein.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help carry out recovery plans, or to develop information. To minimize the risk of incidental take, the applicant has agreed to implement the following conservation recommendations:

1. A stormwater management lake will be constructed north of nest SA-040 as a buffer from residential and commercial buildings. The stormwater lake will be constructed during the non-nesting season (*i.e.*, subsequent to fledging, if nest SA-040 was active, or after February 1, if there is no evidence of breeding activity).
2. To minimize and compensate for potential adverse effects to bald eagles in the action area and the bald eagle population in south Florida, the applicant proposes to provide a long-term conservation benefit. The applicant has agreed to contribute \$35,100 to help support and augment funds available to the FWC to undertake more aerial reconnaissance of bald eagle nests for the regional population in south Florida, which includes Sarasota County. The amount of \$35,100 was determined based on the following calculation:

\$650/hour		18 hours (estimated		3	=	\$35,100
(includes salary	X	time to fly Sarasota	X	years		
and flight costs)		County per year)				

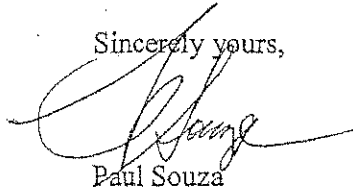
In order for the Service to be kept informed of the actions minimizations or avoiding adverse effects of benefiting listed species or their habitats, the Service requests notification of the conservation recommendations carried out. The applicant will contribute \$35,100 to the FWC within 10 business days of issuance of the Corps permit. The applicant will notify the Service on this transaction by sending the Service a copy of the deposit form and check to document the delivery of payment to the FWC.

REINITIATION NOTICE – CLOSING STATEMENT

This concludes formal consultation on the action outlined in the request. As provided in 50 CFR Section 402.16, reinitiation of formal consultation is required when discretionary Federal agency involvement or control over the action has been retained and if: (1) the amount or extent of incidental take is exceeded, (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this biological opinion, (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this biological opinion, or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

Thank you for your cooperation and effort in protecting fish and wildlife resources. If you have any questions regarding this project, please contact Al Begazo at 772-562-3909, extension 234.

Sincerely yours,



Paul Souza

Acting Field Supervisor

South Florida Ecological Services Office

cc:

Corps, Fort Myers, Florida (Mark Peterson)

EPA, West Palm Beach, Florida

FWC, Punta Gorda, Florida (Jim Beever)

FWC, Tallahassee, Florida (Dan Sullivan)

Service, Atlanta, Georgia (Noreen Walsh) electronic copy only

Service, Jacksonville, Florida (Bald Eagle Species Lead)

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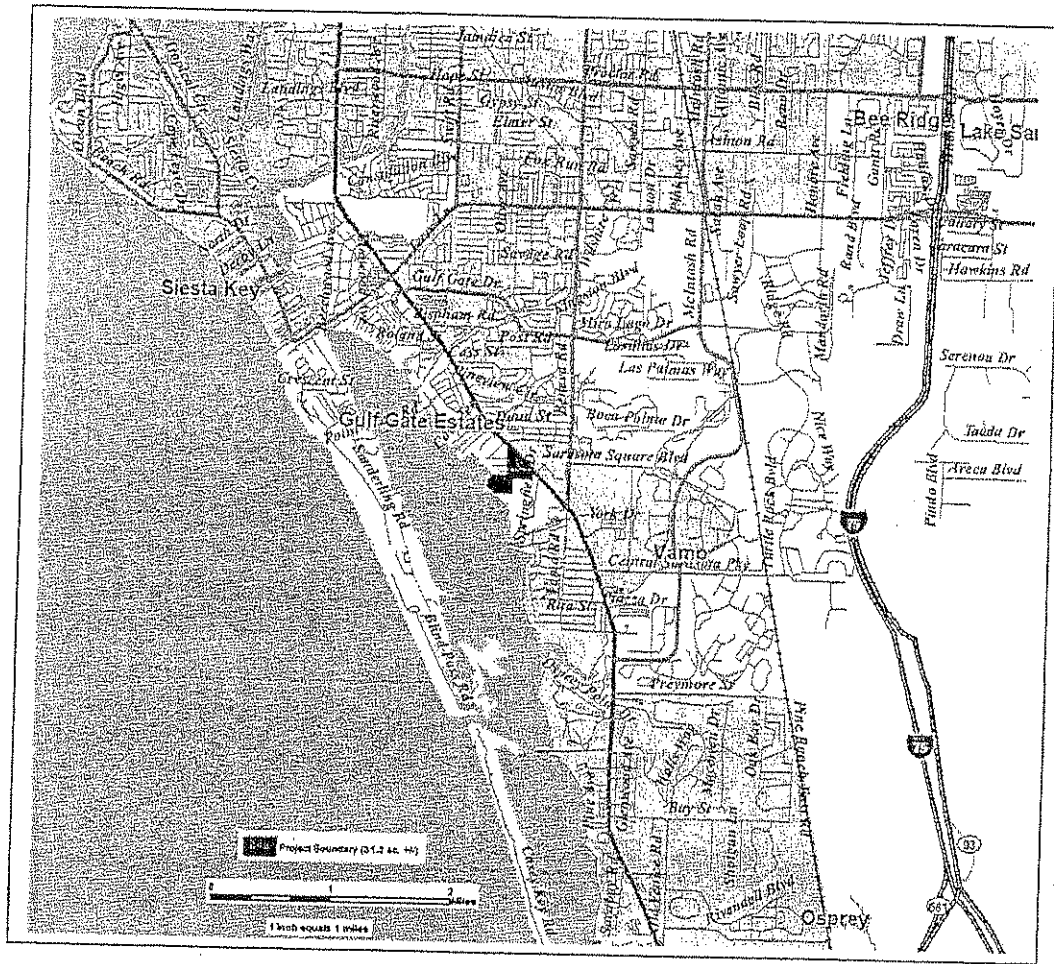


Figure 1. Map of project location.

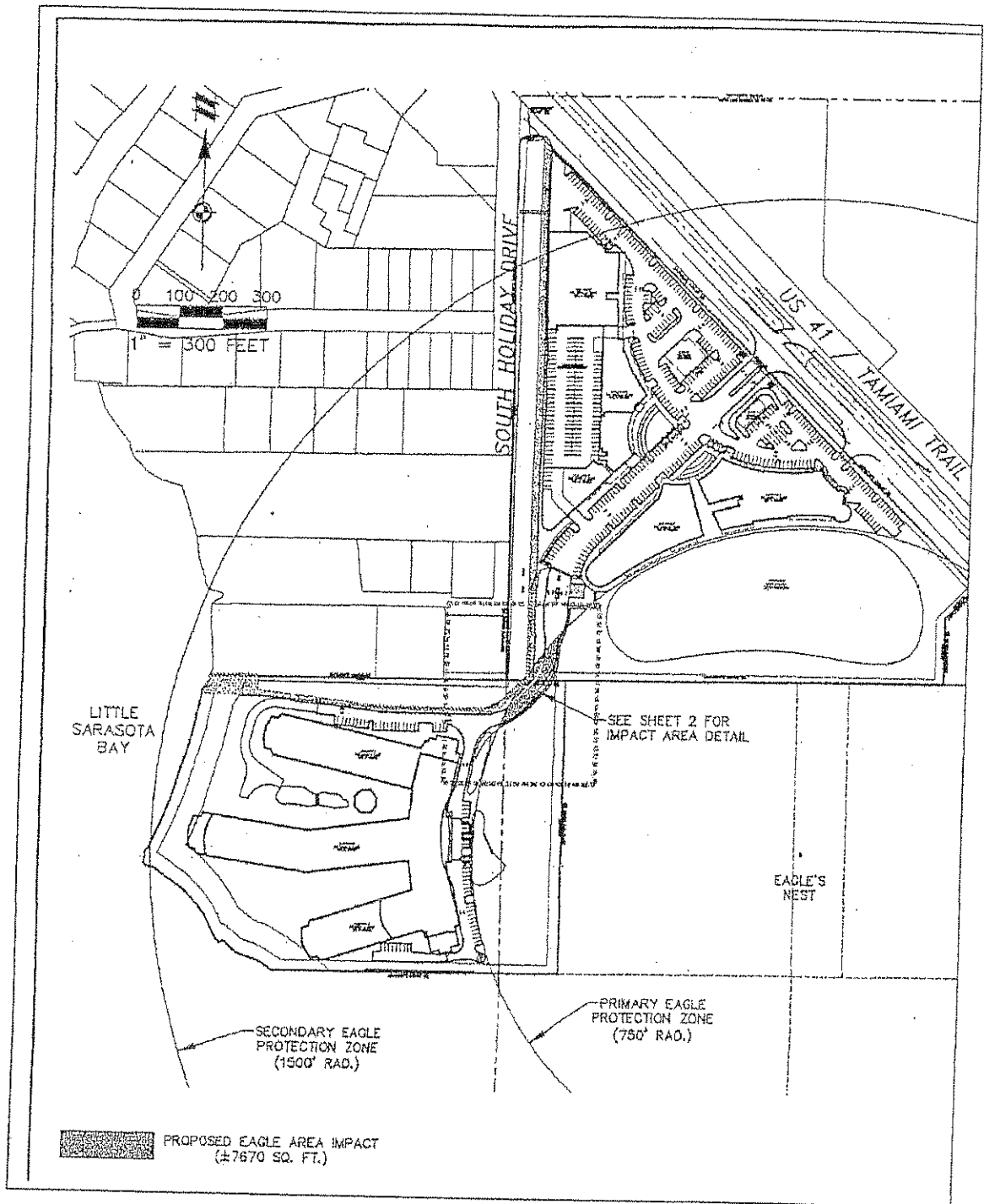


Figure 2. Site plan showing the location of the proposed buildings relative to the nest SA-040.

STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE

1. An eastern indigo snake protection/education plan shall be developed by the applicant or requestor for all construction personnel to follow. The plan shall be provided to the Service for review and approval at least 30 days prior to any clearing activities. The educational materials for the plan may consist of a combination of posters, videos, pamphlets, and lectures (e.g., an observer trained to identify eastern indigo snakes could use the protection/education plan to instruct construction personnel before any clearing activities occur). Informational signs should be posted throughout the construction site and contain the following information:
 - a. a description of the eastern indigo snake, its habits, and protection under Federal Law;
 - b. instructions not to injure, harm, harass or kill this species;
 - c. directions to cease clearing activities and allow the eastern indigo snake sufficient time to move away from the site on its own before resuming clearing; and,
 - d. telephone numbers of pertinent agencies to be contacted if a dead eastern indigo snake is encountered. The dead specimen should be thoroughly soaked in water, then frozen.
2. Only an individual who has been either authorized by a section 10(a)(1)(A) permit issued by the Service, or designated as an agent of the State of Florida by the Florida Fish and Wildlife Conservation Commission for such activities, is permitted to come in contact with or relocate an eastern indigo snake.
3. If necessary, eastern indigo snakes shall be held in captivity only long enough to transport them to a release site; at no time shall two snakes be kept in the same container during transportation.
4. An eastern indigo snake monitoring report must be submitted to the appropriate Florida Field Office within 60 days of the conclusion of clearing phases. The report should be submitted whether or not eastern indigo snakes are observed. The report should contain the following information:
 - a. any sightings of eastern indigo snakes;
 - b. summaries of any relocated snakes if relocation was approved for the project (e.g., locations of where and when they were found and relocated);
 - c. other obligations required by the Florida Fish and Wildlife Conservation Commission, as stipulated in the permit.

RKL
RECEIVED

OCT 10 2008



Sec 28, Twp 37 S, Rng 18 E

Image: 2002 Aerials Express

Preparation Date: 3 March, 2005
 Revision Date: 18 August 2005
 Project Number: 7105-001-W75

Manager: RKL
 GIS Operator: WAC
 GIS QA/QC:

ArcMap Name: lu_n8x11.mxd
 Plot File: lu_n8x11_r2.pdf

Florida Land Use/Land Cover Map *Bayonne 19 - Acre Parcel* *Sarasota County, Florida*

Biological Research Associates

3910 US Highway 301N
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Tampa, Florida 33619

813-664-4500 FAX: 813-664-0440

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Eagle Map *Grande Bay* *Sarasota County, Florida*

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 Sarasota, Florida 34240

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Project Name:
 Eagle Map
 Project Number:
 7105-001-W97
 Date:
 26 August 2005
 Revision Date:
 31 January 06
 Project Manager:
 RCL
 GIS Operator:
 ROA
 QA/QC:
 AM/OC
 Archival Name:
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 File Name:
 eagle_0611.pdf