



United States Department of the Interior

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



June 6, 2012

Donnie Kinard
U.S. Army Corps of Engineers
Fort Myers Regulatory Office
1520 Royal Palm Square Boulevard, Suite 310
Fort Myers, Florida 33919

Service Federal Activity Code: 41420-2009-FA-0120
Service Consultation Code: 4-1-99-F-553
Service Consultation Code: 41420-2001-F-0003-R001
Corps Application No.: SAJ-199900619 (Mod 4-MJD)
Date Received: February 16, 2012
Applicant: SFI Naples Reserve
Project: Naples Reserve
County: Collier

Dear Mr. Kinard:

The U.S. Fish and Wildlife Service (Service) has reviewed the U.S. Army Corps of Engineers' (Corps) request to reinitiate consultation dated February 16, 2012, for the permit modification (Mod 4) listed above. This letter was submitted 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.*) and the provisions of the Fish and Wildlife Coordination Act (FWCA) of 1958, as amended (48 Stat. 401; 16 U.S.C. 661 *et seq.*).

Corps Permit No. 199900619 (IP-SB) was originally issued on January 23, 2001, and authorized the discharge of dredge or fill material to waters of the United States. The permit's initial 5-year construction period was extended for 3 years on January 11, 2006, (Mod 1) and ownership transferred to Naples Reserve, LLC, on June 6, 2006 (Mod 2). The construction period was extended an additional 3 years on January 20, 2009, (Mod 3), with an expiration date of January 20, 2012. On July 28, 2011, the applicant requested an extension of the permit for an additional 5 years, requested transfer of the permit to SFI Naples Reserve, and proposed modifications to the permitted project. Additional information was provided to the Corps on December 22, 2011, and the Corps administratively extended the permit on January 17, 2012. The Corps letter, dated February 16, 2012, acknowledged the applicant's request (Mod 4-MJD). The project is located on the west side of Greenway Road, north of U.S. 41, in Section 1, Township 51 South, Range 26 East, Collier County, Florida (Figure 1).

Consultation History

The January 23, 2001, permitted site plan included 552 residential units, two 18-hole golf courses, a clubhouse, lakes, an entrance road, and onsite preserves. The original project area was



about 688 acres. The permitted project also included an offsite preserve and authorized the discharge of about 555,001 cubic yards of fill into about 86.02 acres of wetlands and the excavation of about 422,838 cubic yards from about 22.55 acres of wetlands. The site wetlands have been impacted (cleared, filled, and excavated) in accordance with the original Corps permit, but the development has not been constructed. Mitigation and monitoring activities have commenced but are not completed (both onsite and offsite). The pending Corps permit modification request (Mod 4-MJD) does not propose any changes to the impact limits or preserve areas presently authorized by the original Corps permit. The proposed revised site plan includes an increase of residential units from 552 units to 748 units, the construction of lakes and nature preserves, and the elimination of the two 18-hole golf courses (Figure 2).

The Corps engaged in formal consultation with the Service for the endangered Florida panther (*Puma concolor coryi*), endangered wood stork (*Mycteria americana*), and endangered red-cockaded woodpecker (RCW; *Picoides borealis*) as part of its review of the original permit application. The Service issued a Biological Opinion (BiOp) on June 9, 2000, under Log No. 4-1-99-F-553 (Service 2000). The BiOp recognized the 320-acre offsite mitigation area, located immediately northeast of the project site adjacent to the Picayune Strand State Forest, would minimize direct and indirect effects to the Florida panther, its habitat, and its prey species. The actual surveyed acreage of the offsite parcel is about 346.04 acres. In accordance with the BiOp, the offsite mitigation parcel is being deeded to the State of Florida.

In June 2009, the Corps requested re-initiation of formal consultation with the Service for a modification on behalf of the project's prior owner. The Service reinitiated consultation in July 2009 for the three species assessed in the original BiOp, along with the endangered Everglade snail kite (*Rostrhamus sociabilis*) and threatened eastern indigo snake (*Drymarchon corais couperi*). The prior owner's modification request was withdrawn by the Corps in May 2010.

On July 28, 2011, the current owner, SFI Naples Reserve, submitted a modification request to the Corps (Mod 4-MJD). Two meetings and conference calls were held with the Corps, the Service, the applicant, and applicant's representatives (Passarella & Associates, Inc. [PAI]) on August 11, 2011, and November 1, 2011, to discuss the SFI Naples Reserve modification request. During the August 11, 2011, meeting, the applicant provided current site information that supports the Corps' original determination that the project "may affect" the Florida panther and "may affect, but is not likely to adversely affect" the wood stork, eastern indigo snake, Everglade snail kite, and RCW. The Service requested additional data for the Florida panther and the Everglade snail kite, which was necessary to reinitiate consultation. Data was specifically requested on Florida panther population and mortality data within a 5-mile radius of the project.

On December 22, 2011, additional data was received. Data provided by PAI (2011) included onsite nesting surveys for the Everglade snail kite and updated traffic pattern model projections for the proposed additional residential units. The data also included updated information on overall changes in the status of the Florida panther within and around the project site.

On February 21, 2012, the Service received a request from the Florida Wildlife Federation (FWF) for additional information in the Service's files in reference to the pending modification (Mod 4-MJD). Information was provided to FWF on February 22, 2012.

The Service has received correspondence from the FWF and the Collier County Audubon Society, dated March 22, 2012, providing supporting reviews of the proposed permit modification (Mod 4-MJD).

Biological Opinion Reinitiation

On February 16, 2012, the Corps requested reinitiation with the Service for Formal consultation on the Florida panther and provided determinations of "may affect, but is not likely to adversely affect" for the wood stork, eastern indigo snake, RCW, and Everglade snail kite.

The "may affect, but is not likely to adversely affect" determination for the wood stork is appropriate as the authorized wetland impacts and mitigation have already occurred and no additional wetland impacts are proposed. The Corps' determination for the eastern indigo snake is supported through the Corps' commitment to include the Service's (2004) *Standard Protection Measures for the Eastern Indigo Snake* as a permit condition. The Corps' determination for the RCW is also appropriate as impacts to suitable RCW habitat have already occurred as part of the original permit, and no additional impacts are proposed.

The Corps also provided a determination of "may affect, but is not likely to adversely affect" for the Everglade snail kite and provided site-specific presence and nesting surveys. The survey report, dated December 2011, noted that potential nesting and foraging surveys were conducted on April 7, 14, 20, and 29, 2011, and May 5, and 11, 2011. Surveys did not document the presence of nesting kites, but snail kites were observed foraging in site wetlands during all survey events. Since the permit modifications do not propose any wetland impacts above those already permitted and impacted and the wetland mitigation has also already occurred, the Corps' determination is appropriate. Further, the creation of the onsite lakes and the adjacent littoral zones may provide additional foraging opportunities for snail kites. Although critical habitat has been designated for the Everglade snail kite, no critical habitat is present onsite, therefore none will be impacted.

In order to assess if adverse effects will occur to the Florida panther in a manner or extent not previously considered in the Service's June 9, 2000, BiOp, we requested additional traffic data on the proposed increase in residential units from 552 units to 748 units, and updated information on overall changes in the status of the Florida panther within and around the project site. Data was specifically requested on population and mortality data within a 5-mile radius of the project and an assessment of panther habitat units (PHUs, see definition below) pre- and post-development.

Since the June 9, 2000, BiOp, the Service has implemented a habitat assessment matrix that considers the contributions project lands provide to the Florida panther, recognizing not all habitats provide the same resource value. The outcome of the matrix is a resource value referenced as PHUs. This methodology allows the Service to consider the resource value of lands proposed for impacts and the corresponding resource value of any lands proposed for compensation to offset unavoidable adverse effects associated with the loss of habitat. This tool

also assists the Service in evaluating direct and indirect effects from habitat loss. The PHU methodology (Service 2011) provides a recommended impact to compensation ratio that is supportive of the Service's South Florida panther population goal to protect and restore habitat for a population of at least 90 panthers. The panther population is based on an average density of one panther per 31,923 acres (Kautz et al. 2006). The PHU methodology is referenced as an appendix in any of the Service's recent biological opinions on the Florida panther and is available on the Service's website (see biological opinions, Florida panther).

The PHU assessment was conducted for the project as permitted, and the associated offsite mitigation area as it currently exists. The onsite (impact) assessment considers the entire site directly impacted and the permitted development areas were scored as urban since the site has already been cleared and filled, and local, State, and Federal approvals have been issued to complete construction of the project as reflected in the Corps permit. The compensatory mitigation has been initiated and portions are completed. The onsite and offsite conservation areas were assessed according to their associated habitat cover values with no exotics since exotic removal and maintenance has taken place. According to the PHU assessment (PAI 2011), the project, as permitted, results in a loss of about 620.12 PHUs with a recommended compensation need of 1,550.29 PHUs. The offsite mitigation area, as restored, generates approximately 3,019.45 PHUs.

To assist the Service in further assessing indirect effects to the Florida panther (*i.e.*, those effects not directly tied to habitat loss), the Service requested additional traffic data on the proposed increase in residential units from 552 units to 748 units, and updated information on overall changes in the status of the Florida panther within and around the project site.

The revised traffic report, as requested by the Service, compared the traffic model for the site plan reflected in the Corps permit (*i.e.*, 552 residential units with two golf courses) and the current traffic model for the revised site plan (*i.e.*, 748 residential units and no golf courses). The September 22, 2011, traffic report prepared by Tindale-Oliver and Associates, Inc., (TOA 2011) noted the original traffic model included 276 dwelling units of single family homes, 276 units of multi-family residences, two 18-hole golf courses, and a club house. The TAO report also noted the permitted 552 dwelling units, the two 18-hole golf courses, and the club house would result in 5,181 average weekday trip ends. About 518 (10 percent) of these trips were projected to occur east of the project on US 41. The traffic model prepared by TOA (2011) for the proposed site plan includes 374 dwelling units of single-family homes, and 374 units of multi-family residences. The two 18-hole golf courses and the club house are no longer components of the project. The 748 dwelling units result in 5,526 average weekday trip ends; 553 (10 percent) of which are projected to occur east of the project on US 41.

Based upon the TOA (2011) report, the net difference in traffic trips generated from the project as permitted by the Corps and the proposed Mod 4 site plan is 35 additional trips occurring east of the project on US 41 (553-518=35). This is about 1.5 trips per hour over a 24-hour period. According to the TOA (2011) report, only 25 percent of these trips, or about 9 trips, would occur between 7:00 p.m. and 7:00 a.m., when panther activity is greatest.

Another component of the Service's assessment of indirect effects to the Florida panther is consideration of a project's proposed actions to minimize traffic effects and reduce vehicle/panther mortalities in the adjacent Florida panther core lands. Such actions can include both installation of fencing and/or wildlife underpasses in traffic/panther mortality hot-spots and development density reduction programs that allow for the transfer of development densities from lands in the panther core lands to lands proposed for development in more urban settings. One such program in Collier County is the Rural Lands Assessment, which was adopted in 2002. This program established Rural Lands Stewardship Areas and Rural Fringe Mixed Use Overlay Districts. Within these designations, undeveloped lands not designated as conservation or in public ownership could be designated as either sending or receiving lands. Sending lands have the highest degree of environmental value and sensitivity, with significant wetlands, uplands, and habitat for listed species. Sending lands are principal targets for acquisition, preservation, and conservation. Receiving lands have a significantly lesser degree of environmental or listed species habitat value and have been determined to be most appropriate for development. A third classification, neutral lands, fall in the middle in terms of value between receiving and sending lands and generally retain the development rights that existed when the Rural Assessment was undertaken.

The proposed Naples Reserve straddles two land-use designations; 310.94 acres are designated as Urban (Urban-Mixed Use District, Residential Fringe Subdistrict) and the remaining 377.16 acres are designated as Agricultural/Rural (Rural Fringe Mixed Use District, Receiving Lands) (Collier County 2007 [Environmental Advisory Council Staff Report]). The maximum density per Collier County's Future Land Use Map is 1,154 units, although this can only be achieved through the transfer of development rights (TDR) from sending lands. The project, as permitted, proposed a density of 552 units and was permitted prior to Collier County's 2002 Rural Lands Assessment; therefore, density transfers are not necessary for the currently permitted 552 units. However, to achieve the maximum density allowed (1,154 units), an additional 602 density units are necessary.

The applicant is requesting a Corps permit modification to substitute permit drawings reflective of a revised project. According to the applicant, the revised site plan accommodates an increase in density from 552 to 748 residential units (Mod 4-MJD), requiring a density transfer of 196 units. An additional 406 density units, in addition to the 196 units, would be needed to achieve the maximum density of 1,154 units. The applicant has proposed the transfer of 196 units from the adjacent, applicant-owned, offsite preserve, which is about 346.04 acres. Although this parcel was part of the original permit and proposed for transfer to State ownership, no such action has yet occurred and the base density units remain available for transfer through Collier County's TDR program.

Although the Service generally does not support transferring development rights from offsite preserve lands that have previously been protected for conservation, due to the timing involved in this project, the Service understands the use of the TDR in this instance. In review of the TOA Report, the Service notes the revised site plan shows a traffic increase of only 35 average weekday trips ($553-518=35$) to occur east of the project on US 41 into panther core lands and about 9 trips would occur between 7:00 p.m. and 7:00 a.m., when panther activity is greatest. The

Service has evaluated this increase in traffic over the base previously reviewed in the June 9, 2000, BiOp, and concludes the indirect effects on the panther related to increases in traffic resulting from the proposed site plan, if any, are insignificant. The Service also notes the additional 406 development units needed to achieve the maximum density allowed by Collier County land development regulations are not a component of this assessment as no additional sending unit lands have been proposed by the applicant.

The Service, during the August 11, 2011, meeting, also requested information regarding overall changes in the status of the Florida panther within and around the project site. Specifically, we requested panther population and mortality data within a 5-mile radius around the project to determine if the population and mortalities increased or decreased in this area from when the project was permitted in 2000 compared to the species current status in 2011. Data on panther presence within the 5-mile radius is limited and is representative of radio-collared panthers monitored as components of ongoing research on a variety of panther population dynamics. The data are not representative of the resident population, as panthers without collars could also be present in the assessment area. However, telemetry from radio-collared panthers was recorded within a 5-mile radius from 2000 to 2011. Telemetry from one panther was documented during 2000; two in 2001; one in 2002 and 2003; zero in 2004 and 2005; three in 2006, 2007, and 2008; one in 2009; six in 2010; and three in 2011. A graph of the data is suggestive of an increasing number of panthers within a 5-mile radius. The Service also monitors the overall population of panthers in southwest Florida and notes over the same period of review, the verified panther population was recorded as 62 in 2000, with recorded increases in each succeeding year and a 2010 verified panther population of 115 individuals (Service 2011). Therefore, the increase in panther telemetry immediately adjacent to the site is likely reflective of the overall increase and not any factors specific to the area surrounding the project site.

We also evaluated the panther mortalities within a 5-mile radius of the project from 2000 to 2011. No panther mortalities were documented from 2000 through 2004, two were documented in 2005, one in 2006, none in 2007, one in 2008, none in 2009, two in 2010, and none in 2011. The data is suggestive of an average of 0.55 panther mortalities per year over the 11 year period, although variability is present. As referenced above for the panther population, the Service also monitors the documented mortality of panthers in southwest Florida and notes over the same period of review, 13 mortalities occurred in 2000 with recorded increases in each succeeding year and a total of 24 panther mortalities in 2010 (Service 2011). A review of the mortality data per year compared to the population estimate per year provides an average of 21 percent mortality on any given year in the panther population, although variability is present. In our review of the data within the 5-mile radius, the Service notes the documented panther deaths average 0.55 mortalities per year, with 2010 data showing an increase over the average and 2009 and 2011 data showing a decrease over the average. Although variability exist between years, the data suggest a constant baseline mortality over the review period, whereas, a similar review of the monitored panther population in southwest Florida shows an increasing population and increasing mortality. The Service has evaluated this data over the baseline previously reviewed in the June 9, 2000, BiOp and concludes changes in panther mortality within the 5-mile radius that may result from the proposed site plan, if any, are insignificant.

In summary, the Service concurs with the Corps' determinations of "may affect, but not likely to adversely affect" for the wood stork, eastern indigo snake, RCW, and Everglade snail kite. The Service has reviewed the information and determinations in the June 9, 2000, BiOp and concludes the proposed project's modification and adverse effects to the Florida panther do not exceed those effects previously evaluated in a manner or extent not previously considered. All reasonable and prudent measures and terms and conditions referenced in the June 9, 2000, BiOp are also applicable to this consultation. This concludes Formal consultation for the Florida panther.

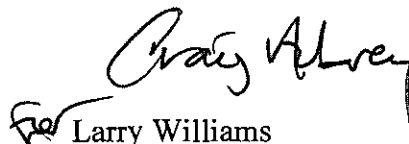
REINITIATION NOTICE

As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; (3) 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 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.

Please note the additional 406 development units needed to achieve the maximum density allowed by County land development regulations on the project site are not a component of this assessment. Should these units be proposed in the future, they will require further analysis by the Service and will trigger reinitiation as referenced above in criteria (3).

Thank you for your cooperation in the effort to protect fish and wildlife resources. If you have any questions regarding this project, please contact Allen Webb at 772-469-4246.

Sincerely yours,


For Larry Williams
Field Supervisor
South Florida Ecological Services Office

cc: electronic only
Corps, Fort Myers, Florida (Monika Day)
FWC, Tallahassee, Florida (FWC-CPS)

LITERATURE CITED

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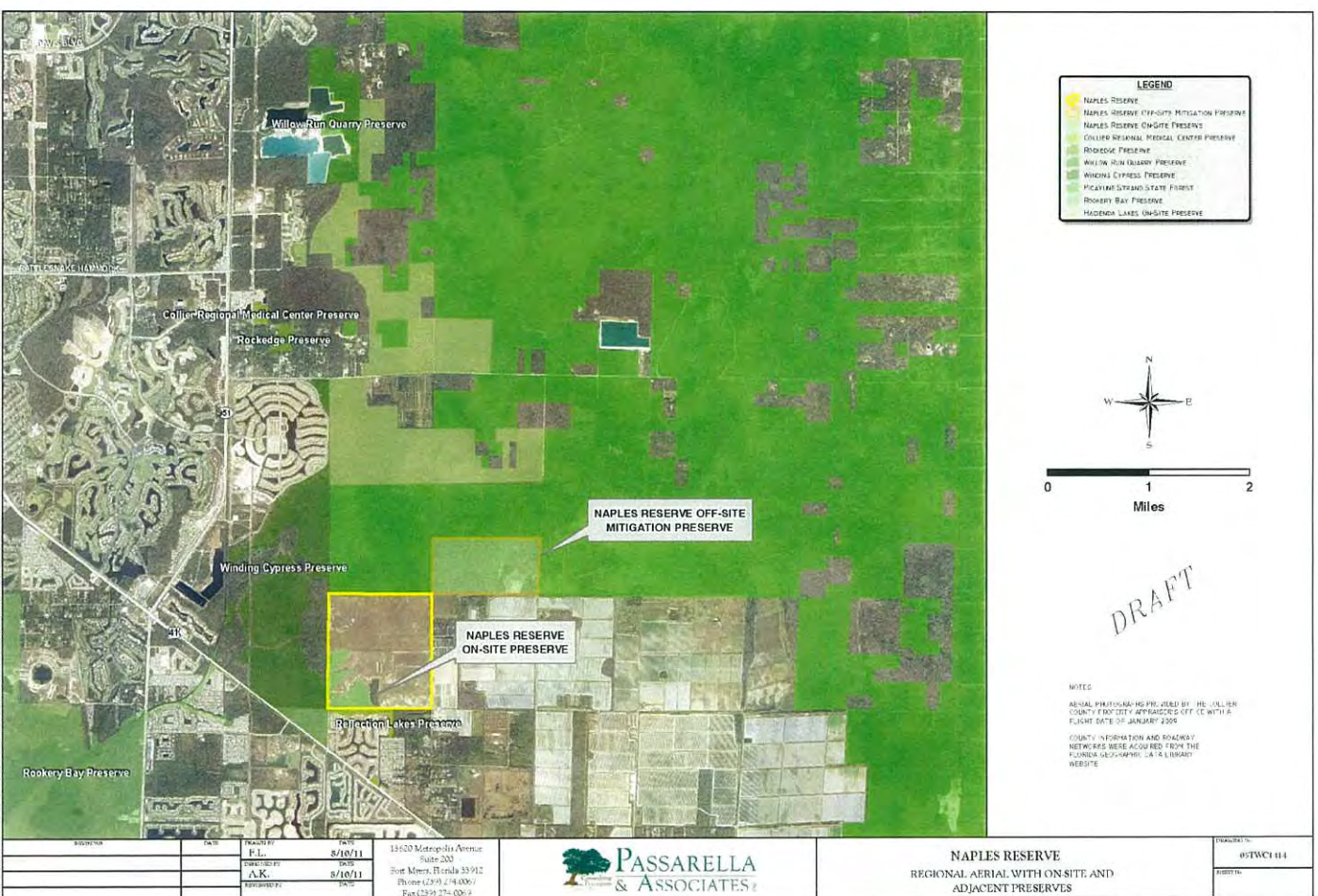
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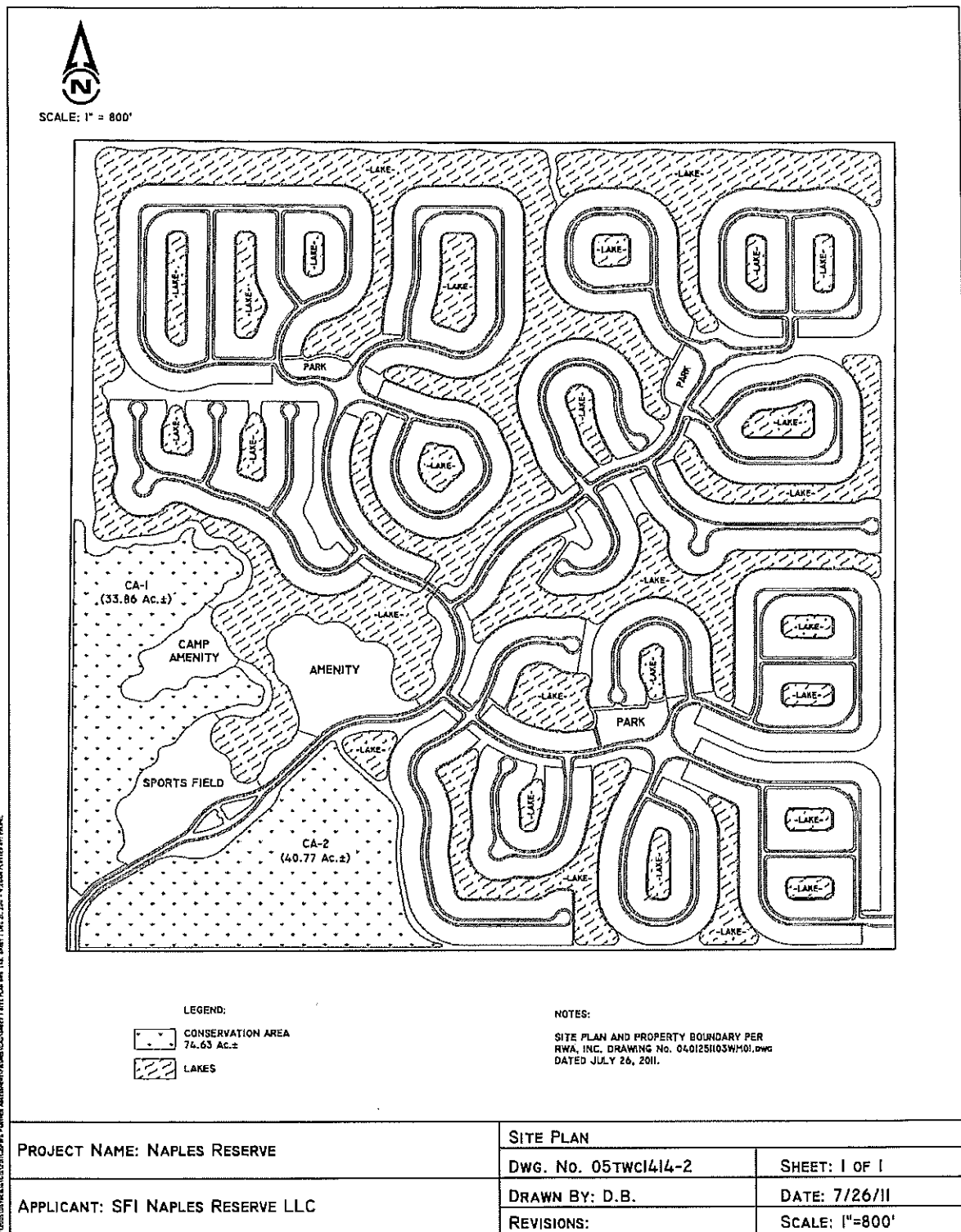


Figure 2. 2012 - Site Plan