



United States Department of the Interior

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



October 15, 2007

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

Service Federal Activity Code: 41420-2006-FA-0885
Section 7 Activity Code: 41420-2006-F-0884
Corps Application No.: SAJ-2006-3929 (NW-MAE)
Formal Consultation Initiation Date: October 5, 2006
Applicant: Southwest Florida Land
163, LLC
Project: Chapel Creek Development
County: Lee

Dear Colonel Grosskruger:

This letter constitutes an addendum to the December 11, 2006, Biological Opinion issued by the Fish and Wildlife Service for the project referenced above. The Biological Opinion for the Chapel Creek Project did not address concurrences to the Army Corps of Engineers' (Corps) determinations for the eastern indigo snake (*Drymarchon corais*) and the wood stork. (*Mycteria Americana*). The Service has reviewed the December 11, 2006, Biological Opinion, and provides this addendum letter in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The project parcel is bounded on the north by the proposed Oak Creek residential development, on the east by a railroad grade, industrial park, and undeveloped lands, on the south by Bayshore Road, and on the west by undeveloped lands, in Section 20, Township 43 South, Range 25 East, Lee County, Florida.

CONSULTATION HISTORY

- On July 20, 2006, the Corps requested written concurrence with the determination of "may affect, but is not likely to adversely affect" the bald eagle.
- On July 25, 2006, the Service met with project representatives to review the proposed bald eagle management and site plans for the Chapel Creek project. Based on the proposed construction plans, the Service determined this project needed to undergo formal consultation and requested the Corps a revised "may affect" determination for the bald eagle.



- On September 1, 2006, the Service received additional information and a revised bald eagle management plan.
- On November 30, 2006, the Corps provided a revised “may affect” determination for the bald eagle. By this same correspondence the Corps requested initiation of formal consultation.
- On December 11, 2006, the Service issued a Biological Opinion on the effect of this project on the bald eagle.
- On August 7, 2007, the Service received an e-mail communication in which the applicant brings to the attention of the Service the omission of a response to the Corps determination for the indigo snake and the wood stork in the August 7, 2007, Biological Opinion.

PROJECT DESCRIPTION

The applicant proposes to construct a mixed-use development. The project includes construction of residential and commercial units and associated infrastructure. The 143-acre project parcel is located in Lee County, Florida. The 18.5 acres of wetlands on-site are composed of 9.11 acres of mixed wetlands hardwoods, 2.86 acres of freshwater marshes, 2.07 acres of streams and waterways (Chapel Creek), 1.52 acres of Cypress (*Taxodium spp.*) wetlands, 1.45 acres of Cypress-Pine (*Pinus spp.*)-Cabbage Palm (*Sabal palmetto*), and 0.26 acre of exotic wetland hardwoods. The 124 acres of uplands on-site are composed of 59.41 acres of sod farm, 16.6 acres of palmetto (*Serenoa/Sabal spp.*) prairie, 12.58 acres of pine flatwoods, and 13.13 acres of cabbage palm. Other upland cover types are represented in smaller proportions. The applicant proposes to discharge 2,500 cubic yards of fill material in 0.42 acre of jurisdictional wetlands. As compensatory mitigation for wetlands impacts, the applicant proposes on-site compensation that includes the preservation, restoration, and enhancement of 15.35 acres of wetlands and 21.27 acres of uplands.

PROPOSED ACTION AND ADDITIONAL INFORMATION AVAILABLE FOR THIS PROJECT

The proposed action is the issuance of an addendum letter to the December 11, 2006, Biological Opinion for the Chapel Creek Project. The December 11, 2006, Biological Opinion addressed the “may affect” determination for the bald eagle, but not the “may affect, but not likely adversely affect” determinations for the eastern indigo snake and wood stork.

ADDENDUM TO THE BIOLOGICAL OPINION

Wood stork

Our records indicate that the project site is located within the core foraging area (CFA) (within 18.6 miles) of an active wood stork (*Mycteria americana*) nesting colony. The Service believes the loss of wetlands within the CFA may reduce foraging opportunities for the wood

storks. To minimize adverse effects to the wood stork, the Service's *Draft Supplemental Habitat Management Guidelines for the Wood Stork in the South Florida Ecological Service Consultation Area* (Guidelines) (Service 2002) recommend the applicant provide wood stork habitat compensation for wetland losses due to the action. The compensation plan should include a temporal lag factor, if necessary, to ensure that wetlands provided as compensation adequately replace the foraging functions lost due to the project. Moreover, wetlands offered as compensation should be of the same hydroperiod and located within the CFA of the affected wood stork colony. In some cases, the Service accepts wetlands compensation located outside the CFA of the affected wood stork nesting colony. Specifically, wetland credits purchased from a "Service approved" mitigation bank located outside the CFA would be acceptable to the Service, provided that impacted wetlands occur within the permitted service area of the bank.

The project as proposed, will impact 0.42 acre of freshwater wetlands. To mitigate for wetland impacts the applicant proposes on-site compensation that includes the preservation, restoration, and enhancement of 15.35 acres of wetlands and 21.27 acres of uplands. The Corps has determined the project "may affect, but is not likely to adversely affect" the wood stork. The Service has reviewed this project for its potential effects to the endangered wood stork and believes that the proposed mitigation complies with the Service's Guidelines. Accordingly, the Service concurs with the Corps' determination.

Eastern indigo snake

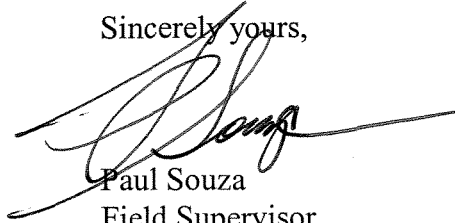
The Corps determined the proposed project "may affect, but is not likely to adversely affect" the eastern indigo snake. Suitable habitat for the eastern indigo snake includes a mosaic of habitats in which they establish home ranges of up to 183 acres on average for males and up to 120 acres for females. Eastern indigo snakes use burrows excavated by other animals, as well as naturally occurring cavities. The applicant is willing to follow the Service's draft *Standard Protection Measures for the Eastern Indigo Snake* (Service 2002). This includes the establishment and implementation of an indigo snake protection plan that addresses protection of this species during construction activities. Accordingly, the Service concurs with the Corps' determination that this project "may affect, but is not likely to adversely affect" the eastern indigo snake.

REINITIATION - 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.

This concludes consultation under section 7 of the Act with the Service for the subject project. Should you have any additional questions or require clarification, please contact Al Begazo at 772-562-3909, extension 234.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Paul Souza', with a long horizontal flourish extending to the right.

Paul Souza
Field Supervisor
South Florida Ecological Services Office

cc:

Service, Section 7 Regional Coordinator, Atlanta, Georgia (Ken Graham)

EPA, West Palm Beach, Florida

Corps, Tampa Regulatory Office, Florida (Melinda Hogan)

LITERATURE CITED

U.S. Fish and Wildlife Service (Service). 2002. Draft Standard Protection Measures for the Eastern Indigo Snake. Fish and Wildlife Service, South Florida Ecological Services Office; Vero Beach, Florida.

U.S. Fish and Wildlife Service. 2002. Draft Supplemental Habitat Management Guidelines for the Wood Stork in the South Florida Ecological Services Consultation Area. Fish and Wildlife Service, South Florida Ecological Services Office; Vero Beach, Florida.