



United States Department of the Interior

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



March 26, 2007

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

Service Federal Activity Code: 41420-2007-FA-0541
Service Consultation Code: 41420-2007-I-0460
Corps Application No.: 200202456 (IP-MGH)
Project: Red Hawk Reserve Project
Date of Original Biological Opinion: June 11, 2003
Date of Reinitiation of Formal Consultation: February 20, 2007
Applicant: Clark Road Development
County: Sarasota

Dear Colonel Grosskruger:

This letter serves to amend the Biological Opinion for the project listed above. The Fish and Wildlife Service (Service) has received the letter dated February 1, 2007, regarding bald eagle (*Haliaeetus leucocephalus*) nest, Florida Fish and Wildlife Conservation Commission (FWC) number SA-39. This nest occurs on the Red Hawk Preserve within the approved project Clark Road Development Corps Permit No. 200202456 (IP-MGH). The Clark Road Development has been renamed Red Hawk Preserve. The U.S. Army Corps of Engineers' (Corps) letter provides additional information on nest SA-39. The Service has reviewed this information for consistency with the *Clearance to Proceed with Construction Activities Adjacent to Bald Eagle Nests* - June 5, 2006 (Guidelines) and provides its views 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.*). The project site is located in Sections 8, 9, 17, and 18, Township 37 South, Range 19 East, Sarasota, Sarasota County, Florida.

Consultation History

On February 12, 2002, bald eagle nest SA-39 was discovered. The nest was occupied by eagles during the 2001/2002 nesting season.

On July 11, 2002, the Corps issued a Public Notice for the "Red Hawk Preserve Development" and determined the construction of this project "may affect" the bald eagle.



On June 11, 2003, the Service issued a Biological Opinion on the effect of the Red Hawk Development on eagle nest SA-39.

On January 22, 2004, Biological Research Associates (BRA), the environmental consultant for the applicant for this project, requested to initiate construction activities in the secondary zone of bald eagle nest SA-39 prior to the end of the bald eagles nesting season. This request was based on information provided by monitoring reports during the previous nesting seasons and the then ongoing 2003/2004 nesting season. The eagle pair at nest SA-39 did not show behavior conducive to a nesting attempt. The Service granted this request.

On May 25, 2004, the Service issued a response letter stating the term and conditions set forth in the June 11, 2003, Biological Opinion should still apply to nest SA-39.

On January 21, 2005, the applicant proposed to deregulate bald eagle nest territory SA-39 on the grounds the nesting pair had built and successfully used another nest outside the project site, the tree supporting the nest had died of natural causes and the nest was dilapidated and in precarious conditions. The Service believed the proposed deregulation at that time was not consistent with the Guidelines.

On June 5, 2006, based on information provided by monitoring reports during the previous nesting seasons and the then ongoing 2005/2006 nesting season, the environmental consultant for the applicant and the Service agreed on proceeding with construction activities within the primary protection zone of nest SA-39. The construction work was scheduled to take place during the non-nesting season. The applicant agreed to contribute \$35,000 to help support and augment funds available to the FWC to undertake more aerial reconnaissance of bald eagle nests for the regional population in west central Florida, which includes Sarasota County.

On February 1, 2007, based on information provided by monitoring reports during the previous nesting seasons and the then ongoing 2007/2007 nesting season the environmental consultant for the applicant provided additional information on the status of the nest SA-39 and requested to have this nest declared abandoned.

BIOLOGICAL OPINION

PROJECT DESCRIPTION

The proposed action is the issuance of a Department of the Army permit by the Corps pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344). The Clark Road Development Company proposes to expand the existing Foxfire Golf and Country Club, also known as Red Hawk Reserve by approximately 102 acres. The project involves the construction of a new golf course clubhouse, 119 residential lots, and associated infrastructure (*i.e.*, roadways, utilities, and surface water management system).

ADDITIONAL INFORMATION AVAILABLE FOR THIS PROJECT

Nest SA-39 was first discovered late during the 2001/2002 nesting season and yielded two chicks. In the 2002/2003 nesting season, the nest was not used. Great horned owls were observed in the nest during the 2003/2004 nesting season prior to it being partially damaged by late-season thunderstorms. The nest was further destroyed by the 2004 hurricane season resulting in few sticks remaining in the crook of the tree. In addition, the nest tree was killed by pine beetles (*Dendroctonus frontalis*) in 2003/2004. The territory remained inactive during 2004/2005. The 2005/2006 nesting season is the third nesting season BRA has conducted monitoring of this nest in relation to construction activities on the site.

On October 4, 2005, BRA initiated monitoring of the above-referenced eagle nesting territory to determine occupancy by breeding eagles. Because eagles have not been observed nesting at this location for several seasons, BRA searched for an alternative nest site in the surrounding area at the beginning of the 2005/2006 nesting season. A request for additional information regarding alternative nest sites also was placed to Jennifer Swan at the FWC Research Laboratory in Gainesville. According to the FWC, an alternative nest site (SA-39A) was discovered by the Audubon Eagle Watch program during the 2004/2005 nesting season. The nest is constructed in a live slash pine (*Pinus elliottii*) within the Ashley Subdivision, located approximately 1,800 feet north of the original nest site. The nesting pair fledged one chick in 2005. BRA observed incubation behavior at SA-39A on 6 December 2005. The eagles have not returned to nest at territory SA-39.

AMENDMENT TO THE BIOLOGICAL OPINION

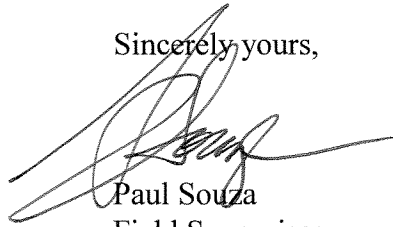
The Service has reviewed the overall information available for nest SA-39 for consistency with the Guidelines. Bald eagles have not nested at territory SA-39 for five consecutive nesting seasons, the nest has been destroyed by natural causes, the tree supporting the nest was killed by bark beetles, and an alternative nest, presumably built and used by this eagle pair, has been active for the last three nesting seasons. Accordingly, the Service designates nest SA-39 as lost and the provisions of the Act and management guidelines no longer apply.

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 the eagles return to another nest site on the project site. If this occurs, any construction work or similar activity must cease pending reinitiation of formal consultation.

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', is written over the typed name.

Paul Souza
Field Supervisor
South Florida Ecological Services Office

cc:

Corps, Tampa Regulatory Office, Florida (Melinda Hogan)

EPA, West Palm Beach, Florida

FWC, Tallahassee, Florida (Dan Gruver)

Service, Region 4, Atlanta, Georgia (Noreen Walsh)