



United States Department of the Interior

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



February 6, 2006

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: 41420-2007-FA-1681
Service Consultation Code: 41420-2007-F- 0638
Corps Application No.: SAJ-2003-00526 (IP-TWM)
Date of Reinitiation of Formal Consultation: November 30, 2006
Project: Cocohatchee Development
Applicant: Cocohatchee Partners, Limited
County: Collier

Dear Colonel Grosskruger:

This letter constitutes an addendum to the February 27, 2004, Biological Opinion for the project referenced above. The Fish and Wildlife Service (Service) has received new information regarding the establishment of a new bald eagle (*Haliaeetus leucocephalus*) nest on the project site, identified as CO-19A by the Florida Fish and Wildlife Conservation Commission (FWC). This nest was constructed after authorized work began on the Cocohatchee Development Project permitted under U.S. Army Corps of Engineers' (Corps) application number SAJ-2003-00526 (IP-TWM), which was issued for this development project and bald eagle nest CO-19. The Service has reviewed the new information for consistency with current bald eagle management guidance 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 following sections add to the existing February 27, 2004, Biological Opinion on the effects of the authorized Cocohatchee Development on the new bald eagle nest CO-19A. The project site is located north of Wiggins Pass Marina in Sections 8, 16, 17, and 20, Township 48 South, Range 25 East, Collier County, Florida.

Addition to Consultation History

On November 28, 2006, the consultant on behalf of Cocohatchee Partners, Limited contacted the Service regarding the construction of a new bald eagle nest within the Cocohatchee project parcel.

On November 30, 2006 the environmental consultant and representatives for Cocohatchee Partners, Limited met at the Service's Vero Beach Office to discuss changes in the timing for the construction of the project and new conservation measures proposed.



PROJECT DESCRIPTION

The applicant proposes to construct five high-rise condominiums (each 15 to 20 stories), a social and fitness center, a golf driving range, tennis courts, guest cottages, parking areas, and storm water management facilities on a 111.3-acre project site. Construction activities associated with the project will impact 1.52 acres of fresh water wetlands. To compensate for impacts to wetlands, the applicant has proposed to purchase mitigation credits from an approved mitigation bank. The applicant also proposes to construct a 35-slip marina. The effect of the proposed marina on the West Indian manatee (*Trichechus manatus*), has been addressed in a separate Biological Opinion. To compensate for unavoidable effects to bald eagles at nest CO-19, and now CO-19A, the applicant proposes to purchase and preserve suitable habitat for nesting bald eagles in, or in the vicinity of, Collier County, in southwest Florida. The project site is located north of Wiggins Pass Marina in Sections 8, 16, 17, and 20, Township 48 South, Range 25 East, Collier County, Florida.

AMENDMENTS TO THE BIOLOGICAL OPINION

ADDITION TO THE DESCRIPTION OF PROPOSED ACTION

No changes or additions to the original site construction plan addressed in the February 27, 2004, Biological Opinion are proposed.

A bald eagle nest FWC number CO-19 occurs within the project footprint. This nest tree was killed by lightning in 1997 and in November 2006 the pair constructed a new nest (CO-19A) approximately 917' to the northwest on a live slash pine (*Pinus elliottii*). Project plans call for the construction of two of the five proposed high-rise condominiums to be constructed within 660' of this new nest. Construction will eventually occur within 60 feet of the nest tree.

The Service has reviewed the proposed construction sequence and notes it will result in changes to several Terms and Conditions of the biological opinion in order to minimize the adverse effects of the project to nesting bald eagles. Below are the revised Terms and Conditions, stated in full. In the event the bald eagles continue nesting in CO-19A, the construction sequence proposed in the biological opinion issued for this project on February 27, 2004 and as modified on July 14, 2004, would be modified as follows:

1. In the event of project implementation, the entry road, stormwater pond, parking area, and golf club house areas will be cleared and constructed in the first non-nesting season (May 16 through September 30). Exterior construction of the golf club house would also occur in the first non-nesting season.
2. Land clearing and the initiation of construction of condominium number 1 also would be initiated in the non-nesting season (May 16 through September 30). However, construction of this 20-story building, which is anticipated to take about 2 years to complete, would not be limited to the non-nesting season. The staging area for building number 1 would be at the future location of building number 3 (Figure 1). Site clearing for the staging areas would occur in the same non-nesting season.

3. In the second non-nesting season, construction of the remaining recreational facilities east of the access road (*i.e.*, fitness facility, social facility, pool, cottages and tennis areas) would be initiated and exterior construction completed. These facilities are intended to be operational upon completion of the 2-year construction phases for condominium number 1.
4. Land clearing and the initiation of construction of condominium number 2 likely would begin in the next non-nesting season, depending on economic conditions. The pad for condominium number 3 would again serve as the staging area for condominium number 2. The permittee agrees the construction sequence for the remaining condominiums would be buildings 3, 4 and 5 with the start of construction of these condominiums initiated only in the non-nesting season(s) (Figure 1). The construction start dates of these condominiums likely would be in consecutive non-nesting seasons, but could be delayed based on the economy.
5. The boardwalk connecting condominium numbers 4 and 5 inside 660' of CO-19A would only be constructed in the uplands in the non-nesting season after these two units are completed and at the revised location as shown.
6. In the event the bald eagle pair returns to CO-19 or builds other nests on property owned by Lodge Abbott Associates, LLC, the permittee agrees to similarly modify the construction sequence on the remaining buildings to minimize the adverse effects of the project on nesting bald eagles.
7. The permittee has proposed to preserve an off-site bald eagle nesting territory as compensation for unavoidable effects to eagle nest CO-19A. Securing a territory may be in the form of fee simple title or a conservation easement to be granted to an acceptable third party. The territory must include sufficient area to accommodate alternate nest trees in the event that the primary nest tree is lost. The permittee will use best efforts to locate and secure a territory in Collier County, but reserves the right to search elsewhere if an acceptable contract cannot be secured in Collier County. The applicant will notify the Service on this transaction by sending the Service a copy of the land title or conservation easement document used to secure the eagle nest territory. Site selection criteria is as follows.

The permittee shall secure by fee simple title or conservation easement a parcel of suitable habitat that is of sufficient size and cover type (*i.e.*, presence of multiple nest trees, buffers, proximity to foraging areas, etc.) to attract and/or sustain nesting bald eagles within Collier County or within neighboring southwest Florida region, dependent upon availability for long-term preservation. Long-term preservation of the parcel must be assured by means that include donation to a governmental or other appropriate third party that will agree to accept the responsibility for perpetual management of the property for bald eagles, other species of conservation concern and natural values. Factors that will be considered on the selection of an appropriate parcel of habitat for preservation are as follows.

- Preference will be given to selection of a parcel that presently supports active nesting by bald eagles, but a parcel that supports suitable habitat for attracting and supporting nesting bald eagles may also be considered acceptable.
- Preference will be given, but not limited to, selection of a parcel of suitable habitat that has been selected and ranked as a conservation priority for preservation by agency process.
- Proximity to other conservation lands being managed or identified for preservation and management, proximity to foraging areas, size, cover types, and presence of other species of conservation concern will be considered for selection of a parcel of suitable habitat for nesting bald eagles.

ADDITION TO ENVIRONMENTAL BASELINE

Addition to Factors Affecting the Species within the Action Area

Construction of the Cocohatchee Development began in 2005 and is ongoing. The CO-19A bald eagle nest is currently surrounded by undeveloped areas. Accordingly, Construction activities associated with the high rising buildings could disturb the CO-19A bald eagle nest, and additional disturbances may result with proposed infrastructure and subsequent activities associated with the occupancy of the proposed buildings.

ADDITIONS TO EFFECTS OF THE ACTION

Addition to Factors to be Considered

The CO-19A bald eagle nest was first constructed in November 2006. The eagle pair is currently using the nest during the 2006-2007 nesting season.

Addition to Analysis for the Effects of the Action

Beneficial Effects - The permittee has proposed to preserve an off-site bald eagle nesting territory as compensation for unavoidable effects to eagle nest CO-19A. Securing a territory may be in the form of fee simple title or a conservation easement to be granted to an acceptable third party. The territory must include sufficient area to accommodate alternate nest trees in the event that the primary nest tree is lost.

Direct Effects - Bald eagles occupying the action area may be adversely affected by the proposed action. The Project may result in direct “take” of the eagles, their eggs or chicks through harm and harassment as a result of the noise and disturbance generated from site work, construction of buildings 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 resulting in embryo mortality, or abandon the nest when chicks are in the nest causing chick mortality.

The Project generally proposes high rising buildings as close as 60 feet from nest CO-19A. It is anticipated even with the restrictions placed on construction activities during the nesting season, this pair will eventually abandon this nest location due to construction-related disturbance or activities associated with the occupancy of the proposed buildings and recreational areas.

Indirect Effects - The types of indirect effects from the proposed action that could result in harm or harassment to the bald eagles at nest CO-19A could include the following:

1. Noise and other activities associated with the construction of the project, subsequent occupation of the high rising buildings, and the use of access roads by landscaping equipment, automobiles, garbage trucks, and motorcycles, may disturb the eagles nesting at nest CO-19A. While the eagles may nest at this territory through the construction of other buildings, it is likely the eagles will abandon this nesting territory in response to construction activities occurring as close as 60 feet of the nest tree.
2. The increased artificial lighting from the proposed residential development may adversely affect the bald eagle. Lighting from the building proposed within 60 feet from the nest and adjacent recreational areas are likely to disturb the bald eagles at CO-19A.
3. Human activities within close proximity of the nest tree may affect the eagle pair nesting at CO-19A. Expected events include pedestrian traffic and activities associated with the occupancy of the buildings. While the permittee will adopt measures to minimize the impact of the proposed activities, construction of the high rising buildings has to extend to the nesting season. Therefore, human activities within about 60 feet from the nest are likely to have a negative impact on the bald eagle at nest CO-19A.

These indirect effects could cause the eagles to abandon the nest prior to egg laying, abandon the nest while eggs are present resulting in embryo mortality, or abandon the nest when chicks are in the nest causing chick mortality. Even with the protection measures in place, the close distance between the proposed construction activities and the nest tree is likely to result in negative indirect effects to the eagles at nest CO-19A.

AMENDMENTS TO THE INCIDENTAL TAKE STATEMENT

ADDITION TO AMOUNT OR EXTENT OF TAKE

The Service has reviewed the biological information for this species, information presented by the Permittee'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 CO-19A 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 resulting in embryo mortality, or abandoning the nest when chicks are in the nest causing chick mortality. Incidental take as described above may occur during the 2007 and 2008 nesting season and/or subsequent nesting seasons for the life of the Project. Nesbitt (1999) analyzed Florida bald eagle nesting data for a 10-year period and reported an average of 1.57 bald eagle chicks produced per nesting territory. The Project may result in the take of 1.57 nestlings per year, for those nesting seasons occurring between the time of abandonment and construction of a new nest.

ADDITION TO REASONABLE AND PRUDENT MEASURES

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 when providing an incidental take statement. 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 at CO-19A nest:

The Permittee shall implement the following conditions:

Cocohatchee Partners, Limited must take all necessary steps, for the duration of the Project, to minimize the potential for incidental take of bald eagles during each nesting season pursuant to their addendum to the existing biological opinion for this project. Cocohatchee Partners, Limited must make reasonable effort, during the construction of the Project, to prolong the integrity of the bald eagle nest tree, the nest, and the surrounding habitat.

ADDITION TO TERMS AND CONDITIONS

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

1. In the event of project implementation, the entry road, stormwater pond, parking area, and golf club house areas will be cleared and constructed in the first non-nesting season (May 16 through September 30). Exterior construction of the golf club house would also occur in the first non-nesting season.
2. Land clearing and the initiation of construction of condominium number 1 also would be initiated in the non-nesting season (May 16 through September 30). However, construction of this 20-story building, which is anticipated to take about 2 years to complete, would not be limited to the non-nesting season. The staging area for building number 1 would be at the future location of building number 3. Site clearing for the staging areas would occur in the same non-nesting season.
3. In the second non-nesting season, construction of the remaining recreational facilities east of the access road (*i.e.*, fitness facility, social facility, pool, cottages and tennis areas) would be initiated and exterior construction completed. These facilities are intended to be operational upon completion of the 2-year construction phases for condominium number 1.

4. Land clearing and the initiation of construction of condominium number 2 likely would begin in the next non-nesting season, depending on economic conditions. The pad for condominium number 3 would again serve as the staging area for condominium number 2. The permittee agrees the construction sequence for the remaining condominiums would be buildings 3, 4 and 5 with the start of construction of these condominiums initiated only in the non-nesting season(s). The construction start dates of these condominiums likely would be in consecutive non-nesting seasons, but could be delayed based on the economy.
5. The boardwalk connecting condominium numbers 4 and 5 inside 660' of CO-19A would only be constructed in the uplands in the non-nesting season after these two units are completed and at the revised location as shown.
6. In the event the bald eagle pair returns to CO-19 or builds other nests on property owned by Lodge Abbott Associates, LLC, the permittee agrees to similarly modify the construction sequence on the remaining buildings to minimize the adverse effects of the project on nesting bald eagles.
7. The permittee has proposed to preserve an offsite bald eagle nesting territory as compensation for unavoidable effects to eagle nest CO-19A. Securing a territory may be in the form of fee simple title or a conservation easement to be granted to an acceptable third party. The territory must include sufficient area to accommodate alternate nest trees in the event that the primary nest tree is lost. The permittee will use best efforts to locate and secure a territory in Collier County, but reserves the right to search elsewhere if an acceptable contract cannot be secured in Collier County. The applicant will notify the Service on this transaction by sending the Service a copy of the land title or conservation easement document used to secure the eagle nest territory. Site selection criteria is as follows.

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- Preference will be given to selection of a parcel that presently supports active nesting by bald eagles, but a parcel that supports suitable habitat for attracting and supporting nesting bald eagles may also be considered acceptable.

- Preference will be given, but not limited to, selection of a parcel of suitable habitat that has been selected and ranked as a conservation priority for preservation by agency process.
 - Proximity to other conservation lands being managed or identified for preservation and management, proximity to foraging areas, size, cover types, and presence of other species of conservation concern will be considered for selection of a parcel of suitable habitat for nesting bald eagles.
8. Should a dead, injured or sick bald eagle be 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 1.57 nestlings 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 measures.

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

To the extent this statement concludes 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.

AMENDMENT TO CONSERVATION RECOMMENDATIONS

The Permittee has proposed and agreed to implement standard conservation measures to reduce the likelihood or minimize the level of take; these measures have been incorporated into the terms and conditions of this biological opinion. The Service has no further conservation recommendations to make for the CO-19A nest, based on the Permittee's voluntary commitment to carry out the minimization and compensation measures contained herein.

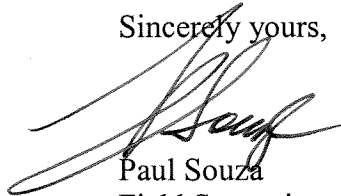
REINITIATION - CLOSING STATEMENT

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 Act-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 Act-listed species or critical habitat not considered in this biological opinion; or (4) a new species is listed or critical habitat is 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
Field Supervisor
South Florida Ecological Services Office

Enclosures

cc: w/enclosures:

Corps, Fort Myers, Florida (Melissa Ellis)

Service, Jacksonville Ecological Services Office (Bald Eagle Species Lead)

District, West Palm Beach, Florida

FWC, Tallahassee, Florida (Brad Gruver)

Lee County, Division of Planning and Environmental Sciences, Fort Myers, Florida

Service, Atlanta, Georgia (Ken Graham)

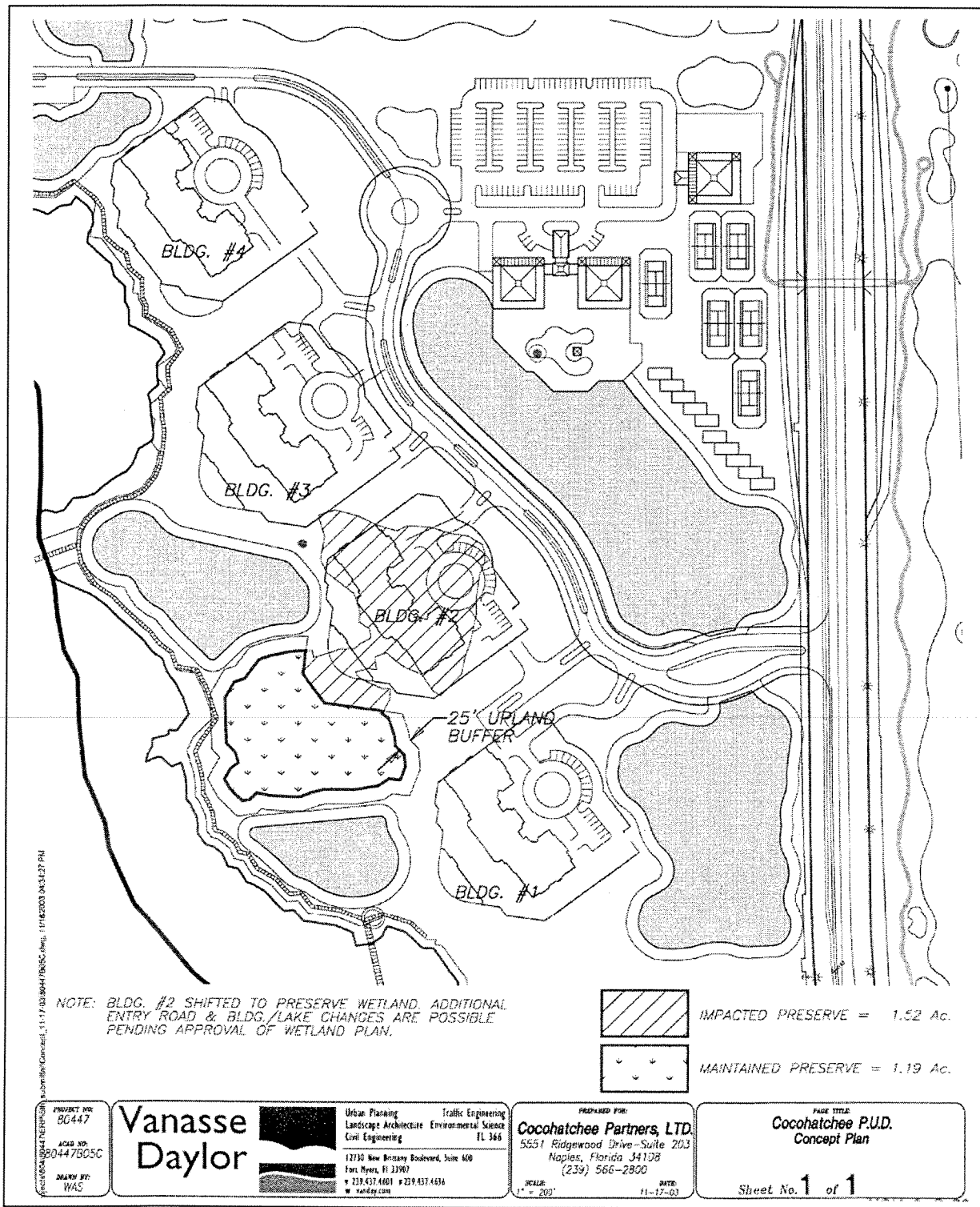


Figure1. Site plan showing the location of the proposed buildings within the Cocohatchee Development Project.