



United States Department of the Interior

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



March 3, 2005

Marie G. Burns
U.S. Army Corps of Engineers
Fort Myers Regulatory Office
2301 McGregor Boulevard, Suite 300
Fort Myers, Florida 33901

Attention: Tunis W. McElwain

Service Log No.: 4-1-03-PL-0946
Corps Application No.: SAJ-2001-1604 (IP-TWM)
Date Received: January 14, 2005
Applicant: R.A.C. Equities, Incorporated
Project: Lucaya f/k/a Asbury Development
County: Lee

Dear Ms. Burns:

The Fish and Wildlife Service (Service) has reviewed the plans, maps, and other information provided by the U.S. Army Corps of Engineers (Corps) for the project listed above. This letter represents the Service's view of the effects of the proposed action in accordance with section 7 of the Endangered Species Act of 1973, as amended (ESA) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*).

PROJECT DESCRIPTION

The Corps has received an application to reinitiate consultation on the application referenced above. The applicant requests that the provisions outlined in the approved Bald Eagle (*Haliaeetus leucocephalus*) Management Plan (BEMP) and biological opinion for nest LE-038C be applied to the newly constructed bald eagle nest, which has been tentatively identified as LE-038D.

The applicant proposes the construction of a 350-unit multi-family residential development with an accompanying stormwater management system. The 88.4-acre project site is comprised of 70.1 acres of Corps jurisdictional wetlands and 18.3 acres of uplands. Habitat cover types include 41.9 acres of disturbed mangrove, 13.4 acres of Australian pine (*Casuarina* spp.), 12.3 acres of disturbed buttonwood (*Conocarpus erectus*)/mangrove, 8.2 acres of melaleuca (*Melaleuca quinquenervia*), 4.9 acres of canal, 3.1 acres of spoil, 1.9 acres of Brazilian pepper (*Schinus terebinthifolius*), 1.2 acres of disturbed wetlands, 0.9 acre of disturbed saltwater marsh, and 0.6 acre of open water.



The applicant proposes to discharge material into 10.9 acres of disturbed buttonwood/mangrove, 9.7 acres of mangrove, 5.6 acres of melaleuca, 1.3 acres of Brazilian pepper, 0.5 acre of saltwater marsh, 0.4 acre of disturbed wetlands, 0.2 acre of canal, and 0.2 acre of borrow pit. As compensatory mitigation to impacts to 28.8 acres of wetlands, the applicant proposes to enhance and preserve 41.3 acres of wetlands onsite. The applicant will remove exotic and nuisance vegetation from the preserve area and place the preserve area under a conservation easement held by the South Florida Water Management District. The site is bounded on the north by McGregor Boulevard, on the south and west by undeveloped or open land, and on the west by residential development and undeveloped open land. The site is located in Section 29, Township 45 South, Range 24 East, Lee County, Florida.

THREATENED AND ENDANGERED SPECIES

On November 7, 2003, the Service provided a biological opinion for the project's impacts on the bald eagle nest LE-038C under Service log number 4-1-03-F-0946. The biological opinion stated that the project is not likely to jeopardize the continuous existence of the bald eagle. An incidental take statement was included in the biological opinion and enumerated several terms and conditions outlining protection of nest LE-038C.

Since the issuance of the permit, another bald eagle nest has been located on an adjacent property east of project site. The nest has been constructed on an Australian pine (*Casuarina equisetifolia*) next to a synagogue in close proximity to a playground associated with a daycare. The new nest has been tentatively identified as LE-038D. The consultant for the applicant has been monitoring the new bald eagle nest and has submitted monitoring reports indicating that the eagles appear not to be affected by human activities associated with the playground and other activities. Monitoring shows that flight paths from the new nest are similar to those identified in the approved eagle management plan for nest LE-038C. Nest LE-038D is further from the project site than nest LE-038C. The project parcel encroaches into part of the secondary zone of the newly constructed nest LE-038D.

The Service has reviewed the November 7, 2003, Biological Opinion and the BEMP provided for this project. As stated in both the biological opinion and the BEMP, every effort must be made to complete construction activities within the secondary zone of nest LE-038D before the onset of the nesting season each year (October 1). In the event that construction activities are proposed to occur within the secondary zone of the nest tree after the beginning of the annual nesting season, the applicant must initiate monitoring to detect the presence of bald eagles on the project site and, if present, any abnormal bald eagle behavior, as provided in the applicant's BEMP.

The Service has assessed the proposed amendments and considers that applying the conservation measures outlined in the November 7, 2003, Biological Opinion and the BEMP submitted for this project to the newly constructed eagle nest LE-038D is appropriate. As of the date of this letter, the Biological Opinion for the Lucaya/Asbury development project, dated

November 7, 2003, is amended. All other components of the Biological Opinion remain unchanged. Please attach this amendment to the original Biological Opinion.

Thank you for your efforts in protecting Florida's listed species. If you have any questions, please contact Al Begazo at 772-562-3909, extension 234.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James J. Slack".

James J. Slack ^{FL}
Field Supervisor
South Florida Ecological Services Office

cc:

EPA, West Palm Beach, Florida (Richard Harvey)

EPA, Fort Myers, Florida (Bruce Boler)

FWC, Punta Gorda, Florida (Jim Beaver)

District, Fort Myers, Florida

Lee County Planning Department, Fort Myers, Florida (Becky Sweigert)