

Summary of Hearing Examiner Recommendation

ALICO ORIOLE WEST MPD

The request seeks to develop commercial/office/hotel/industrial uses at the northwest intersection of Alico and Oriole Roads. The Lee Plan designates the site within the Industrial land use category. This category imposes limitations on retail development to ensure the MPD develops with predominantly industrial uses.

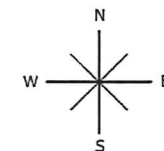
The proposed project is suitable at the site's location along two corridors emerging with intense commercial and industrial uses.

Detailed recommendation follows

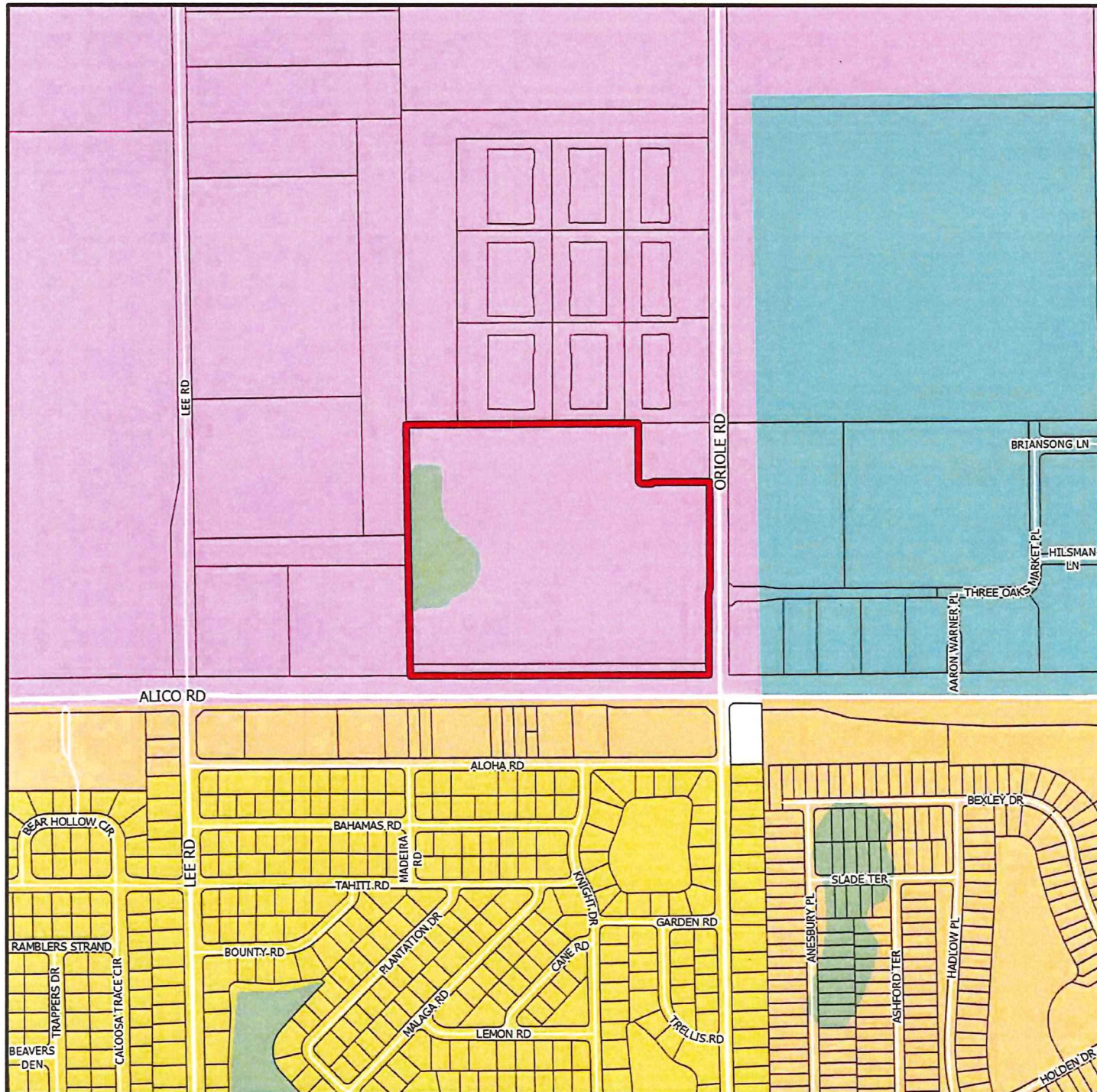
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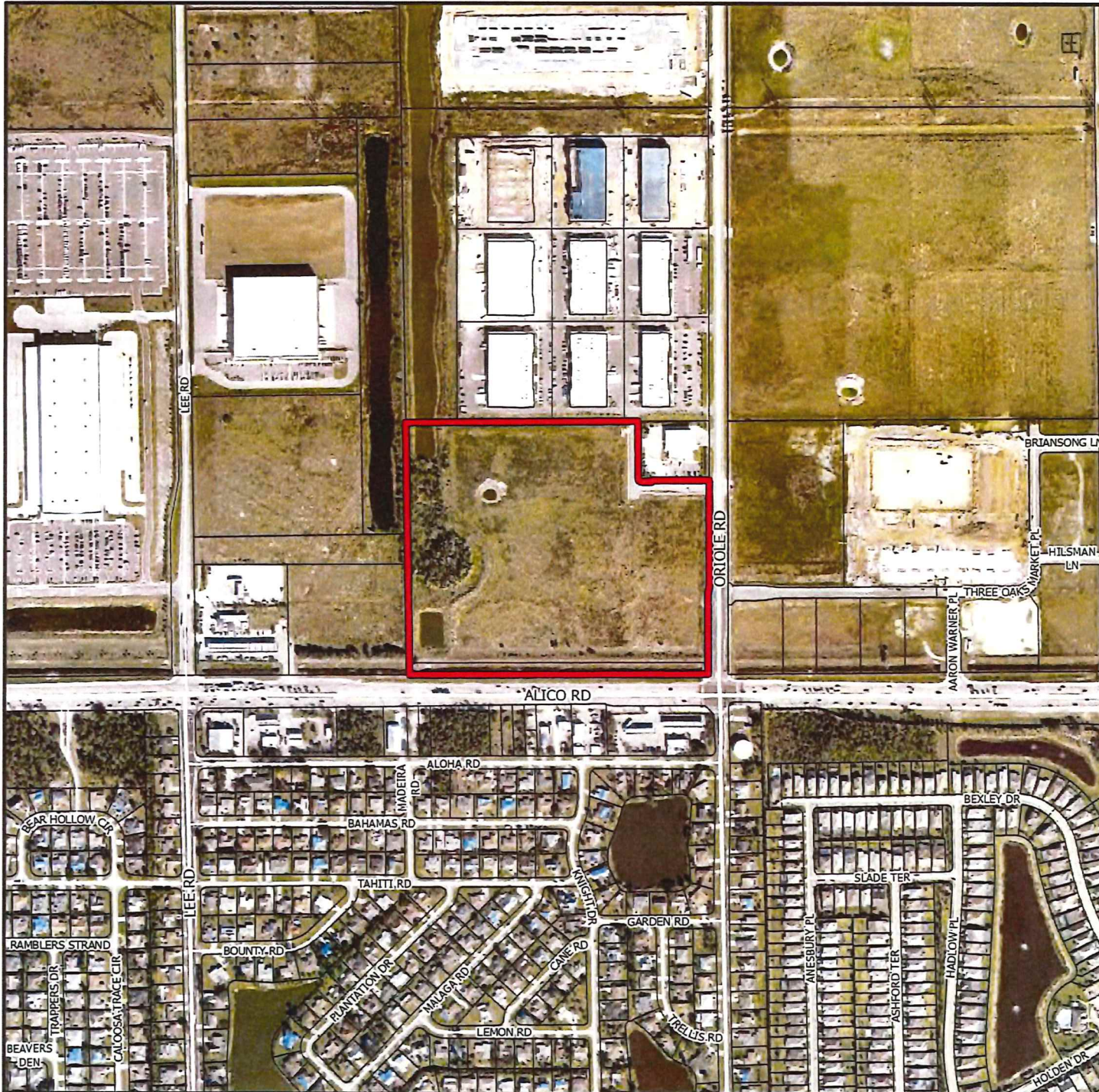
Future Land Use

-  Subject Property
-  Urban Community
-  Suburban
-  Industrial
-  Public Facilities
-  Industrial Commercial Interchange
-  Wetlands



0 300 600 900 1,200
Feet

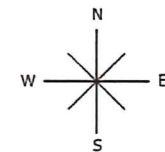




DCI2022-00061

Aerial

 Subject Property



0 300 600 900 1,200
Feet



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2022-00061

Regarding: ALICO ORIOLE WEST MPD

Location: Northwest Corner of Alico Road/Oriole Road Intersection
Gateway/Airport Planning Community
(District 2)

Hearing Date: September 27, 2023

Record Closed: October 2, 2023

I. Request

Rezone 30.65± acres from Agricultural (AG-2) to Mixed Use Planned Development (MPD) to allow 350,000 square feet of commercial retail, office, industrial uses, and 150 hotel rooms.

The property's legal description is set forth in Exhibit A.

II. Hearing Examiner Recommendation

Approval, subject to the conditions and deviations set forth in Exhibit B.

III. Discussion

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property.¹ In satisfaction of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone to MPD.

In preparing a recommendation to the Board, the Hearing Examiner must consider the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC), and other applicable County regulations to the facts presented in a rezoning request.² Specifically, the Hearing Examiner must find the request compatible with surrounding uses and complies with Lee Plan and LDC requirements relating to such items as transportation facilities, natural resources, and urban services.³ The

¹ LDC §34-145(d)(1)(a) & (2)(a).

² LDC §34-145(d)(3).

³ LDC §34-145(d)(4).

Hearing Examiner may take judicial notice of previous Board decisions.⁴ The Hearing Examiner's recommendation must be based on competent and substantial evidence.⁵

Discussion supporting the recommendation of approval of the proposed MPD follows below.

Request Synopsis

The 30.65± acre property sits at the northwest corner of the Alico Road/Oriole Road intersection.

The property is zoned AG-2 and is vacant, except for cattle grazing.⁶ An eagle's nest occupies the western portion of the site. The Eagle Technical Advisory Committee approved Applicant's Bald Eagle Management Plan in June 2023.⁷

Applicant seeks to develop 350,000 square feet of office/retail/commercial/industrial uses and 150 hotel rooms. Site design locates development tracts around internal roadways with lake/preserve areas along the property's western border. Wetlands and preserves are under a conservation easement, bolstering protection of the eagle's nest.

Applicant proposes two access points on Oriole Road and one access to Alico Road.⁸ The northern Oriole Road access will be shared with the San Carlos Fire Station.⁹

Staff recommended approval, finding the proposed MPD satisfies LDC review criteria.

⁴ Lee Co. Admin. Code 2-6, 2.3.D(4)(b).

⁵ Lee Co. Admin. Code 2-6, 3.3.A(2); LDC §34-83(a)(4)(a)(1)(a).

⁶ See Staff Report (Attachment L: Narrative); Applicant's Ex. 1 (slide 5, indicating the property receives an agricultural tax exemption).

⁷ See Staff Report (Attachment H: Bald Management Plan dated May 11, 2023); See also LDC §14-119(c). The Management Plan is attached as Exhibit B2 to the Recommended Conditions herein.

⁸ Lee Plan Map 3G and Objective 36.2 limit Alico Road access from Oriole Road east to Ben Hill Griffin Parkway, and within 1,000 feet of the I-75 interchange. The request is outside the scope of these limitations.

⁹ The access drive is constructed with a stub-out to serve the subject property. (Transcript pg. 8).

F. Will not adversely affect environmentally critical/sensitive areas or natural resources; and

G. Will be served by urban services if located in a Future Urban area.¹⁰

When the requested zoning action is a planned development, the Hearing Examiner must also find:

H. The proposed use/mix of uses is appropriate at the proposed location;

I. Recommended conditions (1) provide sufficient safeguards to the public interest, and (2) reasonably relate to impacts on the public interest expected from the proposed development; and

J. Requested deviations (1) enhance achievement of the objectives of the planned development, and (2) promote the LDC's intent to protect public health, safety, and welfare.¹¹

Character of the Area

The property is located north of Alico Road, west of Oriole Road. Commercial and industrial developments line Alico Road. A fire station abuts the site to the northeast.¹² Residential uses lie along Oriole Road south of Alico Road.

The area is experiencing a development boom due to its proximity to the airport and the emergence of high intensity projects attracting national/regional employers.¹³ Significant road expansion projects continue to open both the Alico Road and Oriole Road corridors to new development opportunities.¹⁴

Alico Road serves as the dividing line between Industrial and Industrial Commercial Interchange lands to the north, and Suburban/Urban Community lands to the south.¹⁵

¹⁰ LDC §34-145(d)(4)(a)(1).

¹¹ LDC §34-145(d)(4)(a)(2).

¹² The San Carlos Fire Station "squares off" the site, occupying a notched out portion in the northeast.

¹³ See Applicant Ex. 1 (slide 10).

¹⁴ Extensions to Three Oaks Parkway and Alico Road are underway, improving connectivity for employees and customers of businesses locating in this area. See Lee County Dept. of Transp. Project Plans (<https://www.leegov.com/dot/engineeringservices/projectsplans>).

¹⁵ See Lee Plan Map 1-A, Staff Report (Attachment B).



Lee Plan Consistency and Compatibility

Planned developments must be consistent with the Lee Plan.¹⁶ Rezoning requests must be compatible with existing/planned uses in the surrounding area.¹⁷ Planned developments must be located to minimize negative effects of proposed uses on neighboring properties.¹⁸

The property is located within the Industrial Development future land use category in the Gateway/Airport Planning Community.¹⁹ The Industrial Development category contemplates industrial activities and mixed uses.²⁰ Appropriate uses include industrial, manufacturing, and research.²¹ This category restricts recreational/service/retail uses to 20% of the site to maintain an industrial focus.²² The LDC further requires at least 30,000 square feet each of commercial and industrial uses to satisfy MPD zoning parameters.²³

¹⁶ LDC §34-411(a).

¹⁷ LDC §34-145(d)(4)(a).

¹⁸ LDC §34-411(c) and (i).

¹⁹ Lee Plan Map 1-A, 1-B; Policy 1.1.7.

²⁰ Lee Plan Policy 1.1.7.

²¹ *Id.*

²² See Lee Plan Policy 1.1.7(2).

²³ See LDC §34-940(a).

Conservation wetlands along the western edge of the property are subject to a conservation easement.²⁴

The property is the sole agricultural zoned parcel in this area. Surrounding lands are zoned industrial, commercial, or mixed-use.²⁵ Adjacent properties are approved for intense commercial and industrial uses including warehousing, manufacturing, outdoor storage, and a fueling station.²⁶ The site plan ensures consistency with surrounding developments along road corridors to preserve the aesthetic for the traveling public by maintaining approved right-of-way buffers.²⁷

The MPD zoning district is appropriate in the Industrial Development category on a high-volume arterial roadway. Industrial and heavy commercial land uses surround the property.²⁸ There are no residential uses adjacent to the property.²⁹

Zoning actions for industrial land uses must be consistent with the Lee Plan's Economic Element.³⁰ The property is well positioned to serve as an employment center for area residents.³¹

The property falls within two Special Treatment Areas: Airport Noise Zone C and the Educational Facility Protection Zone.³² The Lee Plan does not impose development restrictions for properties in Zone C beyond compliance with LDC notification requirements.³³ Schools are prohibited within the Educational Facility Protection Zone. The proposed Schedule of Uses does not permit schools, and conditions of approval require Applicant to provide airport noise zone notification.³⁴

The requested MPD is consistent with the Lee Plan and compatible with the surrounding area.³⁵

²⁴ Applicant delineated wetland areas in its South Florida Water Management District Environmental Resource Permit (ERP) and placed under a conservation easement. See Applicant Ex. 1 (slide 11, referencing ERP #36-05268-P; slide 18, referencing Instrument #2011000192265).

²⁵ See Staff Report (Attachment B); Aerial zoning map *infra*.

²⁶ See Staff Report (pg. 1-2, Attachment L).

²⁷ Staff confirmed right-of-way landscaping is uniform with surrounding developments. See Transcript pg. 22-23.

²⁸ Lee Plan Policy 1.1.7; See Lee Plan Map 3-B.

²⁹ See Staff Report (pg. 4).

³⁰ Lee Plan Policy 7.1.10.

³¹ San Carlos and Three Oaks residents are within proximity.

³² See Lee Plan Map 1E, LDC §§34-1106, 34-1107, Appendix C.

³³ See LDC §34-1104(a)(4), (b); Condition 8.

³⁴ See Condition 2 & 8.

³⁵ Lee Plan Goals 6, 7, 158, Objective 2.1, 2.2, 11.1, Policy 1.1.7, 1.5.1, 2.1.1, 6.1.6, 6.1.7, 7.1.1, 7.1.2, 7.1.3, 7.1.4, 7.1.6, 7.1.7, 7.1.8.

Transportation/Traffic

Planned developments must have access to roads with sufficient capacity to support proposed intensity.³⁶ Existing regulations or conditions of approval must address expected impacts on transportation facilities.³⁷

The site plan reflects access to Alico Road with two accesses to Oriole Road. The northern Oriole Road access is existing with a stub-out to connect the MPD's future development.³⁸ Applicant demonstrated the request provides sufficient access to support proposed development.³⁹

The Traffic Impact Statement (TIS) evaluated transportation impacts and concludes the request will not degrade levels of service on affected roadways/intersections.⁴⁰ Conditions of approval limit project trip generation to ensure no detrimental impact to the surrounding roadway system.⁴¹

Site related impacts will be evaluated during development order review.⁴²

Environmental and Natural Resources

Planned development design should reflect creative use of open space.⁴³ Developers must make an effort to protect and preserve natural site features.⁴⁴

The site is grazing pasture with isolated wetlands.⁴⁵ The South Florida Water Management District issued an ERP encumbering wetlands/preserve areas under a conservation easement.⁴⁶

³⁶ LDC §34-145(d)(4)(a)(1)(d); §34-411(d)(1).

³⁷ LDC §34-145(d)(4)(a)(1)(e); §34-411(d)(2).

³⁸ Transcript pg. 8; Staff Report (Attachment F).

³⁹ LDC §34-145(d)(4)(a)(1)(d); Staff Report (Attachment L).

⁴⁰ See Staff Report (pg. 2, Attachment F: Infrastructure Planning Memorandum dated 8/22/2023; Attachment K: TIS dated 11/10/2022).

⁴¹ See Staff Report (pg. 2, Attachment F: Infrastructure Planning Memorandum dated 8/22/2023); Condition 9. County Transportation staff recommended a condition to limit project intensity to impacts analyzed in the TIS in the event Applicant elects to develop a hotel. See *Id.*

⁴² Site related improvements include capital improvements and right-of-way dedications for "direct access" improvements to the project. Direct access improvements include site driveways/roads, median cuts made necessary by driveways/roads, right-turn, left-turn and deceleration/acceleration lanes serving driveways/roads, traffic control measures, and roads/intersection improvements whose primary purpose at the time of construction is to provide access to the development. See, Lee Plan Glossary and LDC §2-264; Lee Plan Objective 39.1, Policy 39.1.1. LDC §2-66 *et. seq.*

⁴³ LDC §34-411(h).

⁴⁴ LDC §34-411(g).

⁴⁵ See Staff Report (Attachment E).

⁴⁶ See Applicant Ex. 1 (*referencing* SFWMD ERP #36-05268-P and Instrument #2011000192265)

There is an active eagle nest along the western boundary. The Master Concept Plan (MCP) demarcates associated buffer zones.⁴⁷ Conditions of approval limit uses within 660 feet of the eagle nest pursuant to an approved Bald Eagle Management Plan.⁴⁸

Applicant's ecologist identified no other protected species during site review.⁴⁹ Additional species review will occur at the development order stage. State and federal agencies will address permits as needed.⁵⁰

The MCP complies with buffer requirements.⁵¹ Development will be consistent with a detailed Open Space chart attributed to each tract.⁵²

Public Services

Public/urban services are the facilities, capital improvements, and infrastructure necessary to support development.⁵³ The Lee Plan requires an evaluation of available urban services during the rezoning process.⁵⁴

A host of urban services and infrastructure serve the property including roads, transit, potable water, sanitary sewer, police, fire, and emergency medical services.⁵⁵ A San Carlos Fire Protection District station abuts the site.⁵⁶

Transit routes offer stops along Alico Road proximate to the site.⁵⁷

⁴⁷ Buffer zones are indicated by dotted circles with measurements ranging from 200-660 feet, referencing USFWS Permit #MBPER 0019112. See MCP.

⁴⁸ See Condition 6a; Staff Report (Attachment H: Bald Eagle Management Plan dated 5/11/2023).

⁴⁹ See Staff Report (Attachment E).

⁵⁰ *Id.*

⁵¹ See MCP; Staff Report (Attachment E). Buffers are not required for abutting industrial uses. Applicant withdrew Deviation 3B seeking relief from right-of-way buffers. The MCP reflects 20% open space for commercial uses and 10% for industrial uses on each tract, consistent with Deviation 3A. Staff supported reduced open space since the conservation easement/lake tract comprise 5± acres (16.3% of the site). See *Id.*

⁵² See Conditions Exhibit B3.

⁵³ Lee Plan Glossary: Public services include public water/sewer, paved streets/roads, public transit, parks/recreation facilities, urban levels of police, fire, and emergency services, urban surface water management, schools, employment, industrial, and commercial centers, institutional, public, or administrative facilities, community facilities such as senior citizens centers, libraries, and community centers.

⁵⁴ Lee Plan Policy 2.2.1.

⁵⁵ See Staff Report (pg. 3-4, Attachment I: Utility Letters of Availability). The site is serviced by San Carlos Park Fire Protection & Rescue Service. The nearest Lee County Sheriff's office is the South District office.

⁵⁶ Station #54 abuts the northeast corner of the property.

⁵⁷ Lee Tran Route 60 has stops along Alico Road, connecting the site to US 41 and FGCU. See Staff Report (pg. 3).

Deviations

“Deviations” are departures from LDC regulations.⁵⁸ The request proposes deviations⁵⁹ related to excavation setbacks, lake bank sloping, fencing, open space, signage, and connection separation. Several deviations are necessary to recognize existing conditions.⁶⁰ Staff supports the requested deviations.⁶¹

The Hearing Examiner's standard of review requires a finding the deviations:

1. Enhance achievement of objectives of the planned development; and
2. Preserve and promote the general intent of the LDC to protect the public health, safety, and welfare.⁶²

Applying LDC deviation standards of review to testimony and evidence in the record, the Hearing Examiner concludes requested deviations meet approval criteria.⁶³

Conditions

The county must administer the zoning process so proposed land uses acceptably minimize adverse impacts to adjacent property. Conditions must plausibly relate to impacts anticipated from the development and mitigate impacts on public health, safety, and welfare.⁶⁴

The MPD will be subject to many conditions of approval. Conditions relate to impacts anticipated from the project.⁶⁵ The Hearing Examiner recommends:

1. Revisions to conditions to improve clarity; and
2. Deletion of conditions that restate LDC standards and criteria applicable to the project pursuant to Condition 1.

Public

No members of the public appeared at hearing.

⁵⁸ LDC §34-2.

⁵⁹ Applicant withdrew two deviations prior to hearing. See Applicant Ex. a: 48-Hour Letter.

⁶⁰ Existing conditions include lakes extending beyond site boundaries and proximity to the airport. See Staff Report (pg. 7-10). The property is part of a master drainage system permitted by SFWMD ERP #36-05268-P. Airport proximity informs certain planting requirements.

⁶¹ See Staff Ex. 2 (slides 17-19). Staff recommended withdrawal of two deviations to remain consistent with the LDC and surrounding development. Applicant withdrew those requests prior to hearing. See Applicant Ex. a: 48-Hour Memorandum.

⁶² LDC §34-145(d)(4).

⁶³ LDC §34-377(a)(4).

⁶⁴ LDC 34-932(b).

⁶⁵ LDC §34-83(b)(4)a.3.

Conclusion

The Hearing Examiner concurs with staff's analysis and recommendation of approval.

IV. Findings and Conclusions

The Hearing Examiner makes the following findings and conclusions based on the testimony and evidence in the record:

A. *As conditioned herein*, the proposed MPD:

1. Complies with the Lee Plan. See, Lee Plan Goals 2, 4, 6, 7, 77, 124, 158, Objectives 1.6, 2.1, 2.2, 6.1, 7.1, and Policies 1.1.7, 1.5.3, 1.6.1, 1.6.5, 2.1.1, 2.2.1, 6.1.1, 6.1.3, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 7.1.1, 7.1.2, 7.1.3, 7.1.4, 7.1.6, 7.1.7, 7.1.8, 123.6, 124.1.2, 125.1.3, Standards 4.1.1, 4.1.2, 4.1.4; Lee Plan Maps 1A-B, 1E, 3C.
2. Complies with the LDC and other County regulations or qualifies for deviations. See, LDC Chapters 10 and 34.
3. Is compatible with existing and planned uses in the area. See, Lee Plan Policies 1.1.7, 1.5.1, 2.1.1, 2.1.2, 2.2.1, 6.1.4, 7.1.3, 7.1.4; LDC 34-411(c), (i), and (j).
4. Provides sufficient access to support the proposed development intensity, with expected impacts on transportation facilities addressed by existing County regulations or conditions of approval. See Lee Plan Policy 6.1.5, 7.1.1, 7.1.2, 7.1.3, 7.1.4, 7.1.7.
5. Will not adversely affect environmentally critical areas and natural resources. See, Lee Plan Goals 77, 124, 125, Objectives 1.5, 4.1, 77.1, Policy 1.5.1, 6.1.6, 7.1.1, 7.1.6, 124.1.2, Standard 4.1.4, LDC 34-411(h).
6. Will be served by urban services. See, Lee Plan Glossary, Map 4A-B, Goal 2; Objectives 2.1, 2.2, 4.1, 6.1, 7.1, 53.1, 56.1; Policies 2.2.1, and Standards 4.1.1 and 4.1.2; LDC 34-411(d).

B. The Master Concept Plan reflects sufficient access to support the intensity of development. In addition, County regulations and conditions of approval will address expected impacts to transportation facilities. See, Lee Plan Goal 39, Objective 39.1, Policies 7.1.1, 7.1.2, 7.1.3, 7.1.4, 7.1.7; LDC 34-411(d).

C. The proposed mix of uses is appropriate at the proposed location. See, Lee Policies 1.1.7, 1.5.1, 2.1.1, 6.1.4, 6.1.7, 7.1.1, 7.1.2, 7.1.3, 7.1.4.

- D. The recommended conditions are sufficient to protect the public interest and reasonably relate to the impacts expected from the development. See, LDC Chapters 10 and 34.
- E. As conditioned herein, the deviations:
 - 1. Enhance the objectives of the planned development; and
 - 2. Promote the intent of the LDC to protect public health, safety, and welfare. See, 34-377(b)(4).

Date of Recommendation: November 8, 2023.



Amanda Rivera
Deputy Hearing Examiner

Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

Exhibit A Legal Description and Vicinity Map
Exhibit B Recommended Conditions and Deviations
Exhibit C Exhibits Presented at Hearing
Exhibit D Hearing Participants
Exhibit E Information

Exhibit A

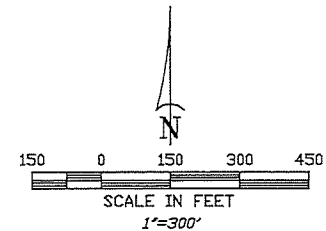
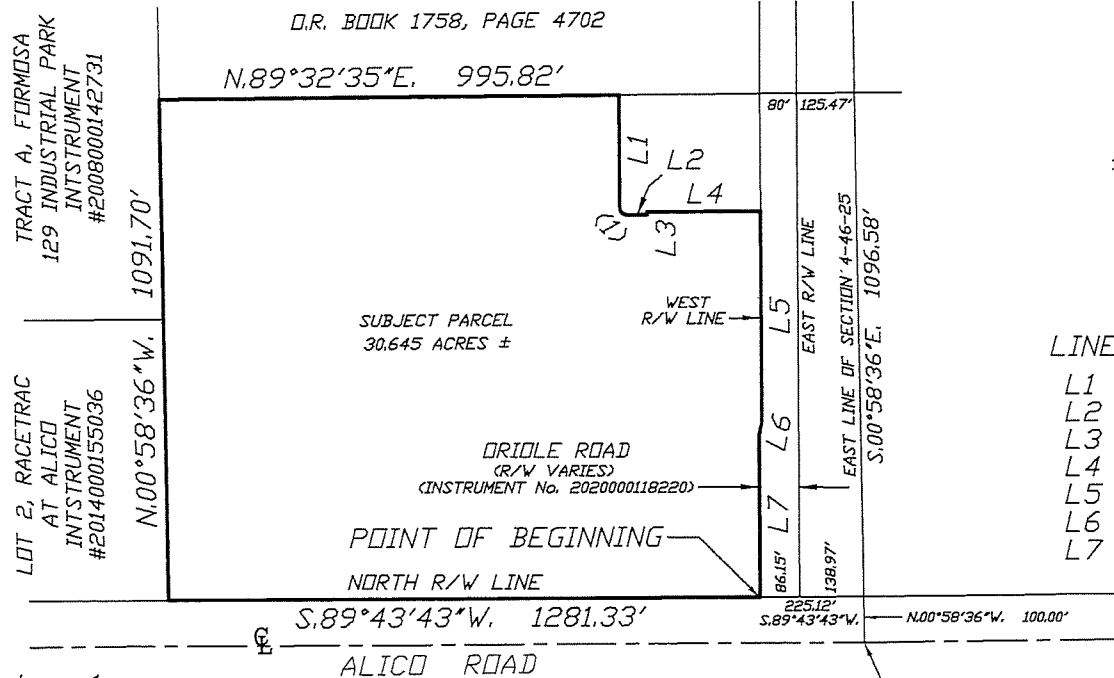
LEGAL DESCRIPTION AND VICINITY MAP

HARRIS-JORGENSEN, LLC
3048 DEL PRADO BLVD. S. SUITE 100
CAPE CORAL, FLORIDA 33904
PHONE: (239) 257-2624
FAX: (239) 257-2921

SKETCH TO ACCOMPANY DESCRIPTION
**A PARCEL OF LAND LYING
IN SECTION 4**

TOWNSHIP 46 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

SEE EXHIBIT "A" (SHEET 2 OF 2)
FOR DESCRIPTION
THIS IS NOT A BOUNDARY SURVEY



LINE TABLE

LINE	BEARING	DISTANCE
L1	S.00°17'39"E.	244.48'
L2	N.89°42'21"E.	42.55'
L3	N.00°17'39"W.	6.00'
L4	N.89°42'21"E.	245.45'
L5	S.00°16'17"E.	460.65'
L6	S.12°01'31"W.	28.89'
L7	S.00°16'17"E.	350.62'

Curve number 1

Radius= 17.00'
Delta= 90°00'00"
Arc= 26.70'
Chord= 24.04'
Chord Brg.= S.45°17'39"E.

SHEET 1 OF 2

EXHIBIT A

DESCRIPTION TO ACCOMPANY SKETCH

EXHIBIT "A"

DESCRIPTION:

A TRACT OR PARCEL OF LAND LYING IN SECTION 4, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE AFORESAID SECTION 4; THENCE RUN N.00°58'36"W. ALONG THE EAST LINE OF SAID SECTION 4 FOR 100.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF ALICO ROAD; THENCE RUN S.89°43'43"W. ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 225.12 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S.89°43'43"W. ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 1281.33 FEET; THENCE RUN N.00°58'36"W. (AS MEASURED PERPENDICULAR) WEST OF AND PARALLEL WITH THE COMMON LINE BETWEEN SECTIONS 3 & 4, FOR 1091.70 FEET; THENCE RUN N.89°32'35"E. FOR 995.82 FEET; THENCE RUN S.00°17'39"E. FOR 244.48 FEET TO A POINT OF CURVATURE; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 17.00 FEET, A CENTRAL ANGLE OF 90°00'00", A CHORD BEARING OF S.45°17'39"E. AND A CHORD DISTANCE OF 24.04 FEET TO A POINT OF TANGENCY; THENCE RUN N.89°42'21"E. FOR 42.55 FEET; THENCE RUN N.00°17'39"W. FOR 6.00 FEET; THENCE RUN N.89°42'21"E. FOR 245.45 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF ORIOLE ROAD (80 FEET WIDE); THENCE RUN S.00°16'17"E. ALONG SAID WEST RIGHT-OF-WAY LINE FOR 460.65 FEET; THENCE RUN S.12°01'31"W. ALONG THE WEST RIGHT-OF-WAY LINE OF ORIOLE ROAD (R/W VARIES) FOR 28.89 FEET; THENCE RUN S.00°16'17"E. ALONG SAID WEST RIGHT-OF-WAY LINE FOR 350.62 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 30.645 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE WEST RIGHT-OF-WAY LINE OF ORIOLE ROAD AS BEING S.00°16'17"E.

Phillip M Mould, Digitally signed by
P.S.M. 6515 Phillip M Mould, P.S.M.
State of Florida 6515 State of Florida
Date: 2023.02.07
15:02:12 -05'00'

PHILLIP M MOULD
LS6515
MAY 27, 2020

REVIEWED
DCI2022-00061
Hunter Searson, GIS
Planner
Lee County Government
5/31/2023

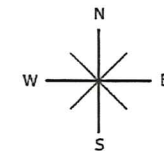
NOTE: THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006, FS 668.50, FS 472.025, 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.



DCI2022-00061

Zoning

 Subject Property



0 300 600 900 1,200
Feet



Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

CONDITIONS

1. Master Concept Plan(MCP)/Development Parameters

- a. MCP. Development must be consistent with the one-page MCP entitled “Alico Oriole West” date stamped 9/28/2023, except where modified by conditions below (Exhibit B1).
- b. LDC and Lee Plan. Development must comply with the LDC and Lee Plan at time of development order approval, except where deviations are granted herein. Subsequent modifications to the MCP or conditions of approval may require further development approvals.
- c. Development Parameters. This MPD allows a maximum of 175,000 square feet of industrial uses, 175,000 square feet of commercial uses, and 150 hotel rooms. The project must maintain a minimum of 30,000 square feet of commercial uses and 30,000 square feet of industrial uses.

2. Uses and Site Development Regulations

a. Schedule of Uses

Uses with an asterisk (*) are not permitted on Tract A, Tract C-6, C-5, and C-4 (within 660' of the eagle nest)

Accessory Uses and Structures

Administrative Offices

Agricultural Uses and Agricultural Accessory Uses, subject to Condition 4

Agricultural Services Office/Base Operations

Aircraft Food Services and Catering

Airport Operations Facilities

Amateur Radio Antennae and Satellite Earth Stations

Animals, Clinic or Kennel

ATM (automatic teller machines)

Auto Parts Store, with or without installations

Auto Repair and Service, Groups I and *II

*Automobile Service Station -Limited to 1 for the entire MPD

Bait and Tackle Shop

Banks and Financial Establishments, Groups I and II

Bar or Cocktail Lounge – limited to 1 for the entire MPD

Boats: Boat Parts Store; [Boat Repair and Service]*

Boat Sales

Broadcast Studio, Commercial Radio and Television
Building Materials Sales
Business Services, Groups I and II
*Bus Station/Depot
Caretaker's Residence
Car Wash
Cleaning & Maintenance Services
Clothing Stores, General
Clubs: Commercial, Fraternal, Membership Organization
Cold Storage, Precooking, Warehouse & Processing Plant
Computer and Data Processing Services
Consumption on Premises - In conjunction with a restaurant use, bar, cocktail lounge, hotel/motel, nightclub only
Contractors and Builders, Groups I, *II, and *III
*Convenience Food and Beverage Stores - Limited to 1 for the entire MPD
Cultural Facilities
Day Care Center, Child, Adult
Department Store
Drive through for any permitted use
Drugstore, Pharmacy
Emergency Operations Center
EMS, Fire, or Sheriff's Office
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities, Group I
 - Group *II (by amendment through the public hearing process only)
Excavation: Water Retention
Excess Spoil Removal
Factory Outlets, Point of Manufacture Only
Fences, Walls
Food and Beverage Service, Limited
Food Stores, All Groups
*Freight or Cargo Handling Establishments
Funeral Home and Mortuary, with or without crematorium
*Gasoline Dispensing Systems, Special
Gift and Souvenir Shop
*Golf Driving Range
Hardware Store
Health Care Facilities, Groups I, II, and III
*Heliport or Helistop
Hobby Toy and Game Shop
Hospice

Hotel/Motel – 150 Rooms Maximum

Household and Office Furnishings, All Groups

Insurance Companies

Laundromat

Laundry and Dry Cleaning, Groups I and II

*Lawn and Garden Supply Store

Library

*Manufacturing of:

- Apparel Products
- Boats
- Chemical and Allied Products, Groups I and II
- Electrical Machinery and Equipment
- Fabricated Metal Products, Groups I, II and III
- Food and Kindred Products, Group III
- Furniture and Fixtures
- Leather and Leather Products, Group II
- Lumber and Wood Products, All Groups
- Machinery, Groups I, II, and III
- Measuring, Analyzing and Controlling Instruments
- Novelties, Jewelry, Toys and Signs, All Groups
- Paper and Allied Products, All Groups
- Rubber and Plastic Products, Group II
- Stone, Clay, Glass and Concrete Products, Groups I-IV
- Textile Mill Products, Groups I, II, and III
- Transportation Equipment, Groups I, II, and III

Maintenance Facility (Government)

Medical Office

Motion Picture Production Studio

Nightclub – limited to 1 for the entire MPD

Nonstore Retailer, All Groups

Package Store – limited to 1 for the entire MPD

Paint, Glass and Wallpaper

Parks, Groups I and II

Parcel and Express Services

Parking Lot - Accessory, Commercial, Garage, Public Parking, Temporary

Personal Services, Groups I, II, III, IV (Excluding Massage Parlors, Steam
or Turkish Baths, Escort Services, Palm Readers Fortunetellers or
Card readers)

Pet Services

Pet Shop

Pharmacy

Photofinishing Laboratory

Post Office

Maximum Building Height:

65 feet (Height above 35 feet must maintain additional setbacks of one-half foot for every foot)

Minimum Building Separation:

One-half the sum of the heights of both buildings or 20 feet, whichever is greater.

Maximum Lot Coverage:

Commercial:	55%
Industrial:	75%

Minimum Open Space: (See Deviation 3A)

Commercial:	20%
Industrial:	10%

3. Building Design

Buildings/structures fronting Alico and Oriole Roads must comply with LDC Chapter 10, Article IV, Design Standards and Guidelines for Commercial Buildings and Development

4. Agricultural Uses

Existing bona fide agricultural uses (pasture/grazing) may continue subject to the following:

- a. Termination of Agriculture Use. Agricultural uses must terminate on project areas receiving development order approval for vertical development and prior to county issuance of a vegetation removal permit. Development order approvals for plats, infrastructure improvements, landscaping, surface water management, or other non-vertical development do not trigger termination.
- b. Additional Clearing Prohibited. Additional clearing of trees/vegetation in an agricultural area is prohibited. Existing areas of bona fide agricultural use may be maintained, (i.e. mowed) but not cleared or expanded. This prohibition does not preclude County approval of requests to remove invasive exotic vegetation.
- c. Proof of Termination. Upon approval of development order for vertical development and prior to the issuance of vegetation removal permit,

Printing and Publishing
*Processing and Warehousing
Real Estate Sales Office
Recreational Facilities, Commercial, Groups I, *III and IV (Excluding Outdoor Gun Ranges)
Rental or Leasing Establishment: Group I, II, III
Repair Shops: Groups I, II, III and IV
Restaurant, Fast Food
Restaurants: All Groups
Retail and Wholesale Sales, Ancillary to an Approved Use
*Self Service Fuel Pumps - In conjunction with convenience food and beverage use, or auto service station, maximum 20 pumps
Signs
Social Services: Groups I-IV
Specialty Retail Shops: All Groups
Supermarket
Storage: Indoor, Open
Studios
Temporary Uses
Theater, Indoor
*Transportation Services, Groups I – IV (*applies to Groups III & IV only)
*Truck Stop, Trucking Terminal
Used Merchandise Stores: Groups I, II and III
Variety Store
Vehicle & Equipment Dealers: Groups I, II & III
Warehouse, Mini warehouse, Private, Public, Cold Storage, Hybrid
Wholesale Establishments: Groups I, II, III and IV

b. Site Development Regulations

Minimum Lot Area and Dimensions:

Area: 10,000 square feet
Width: 100 feet
Depth: 100 feet

Minimum Setbacks:

Street (Public): 25 feet
Street (Private): 15 feet
Side: 10 feet
Rear: 15 feet
Water Body: 25 feet

Development Perimeter Building Setback: 25 feet

developer must provide written proof of the following, subject to review/approval by the County Attorney's Office:

- i. Affidavit. Sworn affidavit from the property owner confirming:
 - a) Date agricultural uses ceased.
 - b) Legal description of the property subject to development order approval for vertical development.
 - c) Affirmative statement acknowledging and agreeing agricultural uses are illegal and prohibited on the property. The property owner must covenant with the County not to resume agricultural uses until the property is rezoned to permit agricultural use.

The affidavit constitutes a covenant between the property owner and Lee County, binding on the owner and its successors. The covenant must be recorded in Lee County public records at the owner's expense.
- ii. Termination of Tax Exemption. Termination of the agricultural tax exemption for portions of the property subject to a development order for vertical development. Proof of termination must include a copy of the request to terminate the tax exemption submitted to the Lee County Property Appraiser.

5. Unified Sign Plan

Developer must submit a unified signage plan with the development order application.

6. Natural Resources

- a. Developer must adhere to the Bald Eagle Management Plan dated May 11, 2023, for proposed impacts within 660 feet of the bald eagle nest (Exhibit B2). The 660-foot buffer zone and the activities/restrictions outlined in the Plan must be shown on development order plans.
- b. Transportation Services Groups III and IV uses are not permitted on Tract A, Tract C-6, Tract C-5, and Tract C-4.

7. Environmental

- a. Development order plans must demonstrate compliance with the open space chart (Exhibit B3).
- b. Development order plans must demonstrate 3.12 acres of indigenous preserve in substantial compliance with the MCP.
- c. Developer must include a map depicting the location of mechanical and hand-removal methods of exotic vegetation removal prior to issuance of the vegetation removal permit. Mechanical clearing must be limited to non-indigenous areas. Native vegetation must be protected by the tree barricades.
- d. Developer must provide a LDC compliant indigenous management plan before development order approval. The Plan must be approved by Lee County Development Services staff.
- e. Development plans must depict a 20-foot Type D right-of-way buffer along Alico Road.
- f. Development plans must depict a 10-foot Type D buffer along Oriole Road (along Tract C-1 and B only).

8. Airport Noise Zone

The developer, successor or assign acknowledges the property's proximity to Southwest Florida International airport and the potential for noises created by and incidental to the operation of the airport as outlined in Land Development Code Section 34-1104. The developer, successor or assign acknowledges that a disclosure statement is required on plats, and in association documents for condominium, property owner and homeowner associations as outlined in Land Development Code Section 34-1104(b).

9. Development Services

Development intensity is limited to trips generated by 175,000 SF commercial retail use and 175,000 SF industrial use based upon the Institute of Transportation Engineers (ITE) Trip Generation Manual in effect at time of local development order.

10. Development Permits

County development permits do not create rights to obtain permits from state/federal agencies. Further, County development permits do not create liability on the part of the County if Applicant fails to obtain requisite approvals or fulfill

obligations imposed by state/federal agencies or undertakes actions in violation of state/federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

DEVIATIONS

DEVIATION 2A: Withdrawn

DEVIATION 2B: Setbacks for Water Retention or Detention Excavations. Relief from LDC §10-329(d)(1)a.3, which prohibits excavation within 50 feet of private property line under separate ownership; to allow a 25-foot setback or to allow a zero-foot setback when the lake is combined with a lake on abutting property.

HEX Recommendation: Approve

DEVIATION 2C: Relief from Bank Slopes. Relief from LDC §10-329(d)(4), which requires banks of excavations to be sloped at a ratio not greater than six horizontal feet to one vertical feet from the top of bank to a water depth of two feet below the control elevation; to allow the existing lake (lake Tract A) to be sloped at a ratio of four horizontal to one vertical.

HEX Recommendation: Approve, This deviation, subject to the following condition:

Cross-sections of the littoral shelves and existing vegetation of preexisting lakes must be submitted and signed/sealed by a civil engineer prior to development order approval.

DEVIATION 2D: Fencing. Relief from LDC §10-329(d)(6), which requires a four-foot fence may be required to be placed around excavations for water retention when located less than 100 feet from any property under separate ownership; to allow no fencing around any existing or proposed lakes.

HEX Recommendation: Approve

DEVIATION 3A: Open Space. Relief from LDC §10-415(a), which requires Large Industrial Developments to provide a minimum of 20% open space and Large Commercial Developments to provide a minimum of 30% open space; to allow the 5± acre Conservation Easement and Lake Tract parcels to be credited toward the open space and reduce the requirement to 20% for commercial uses and 10% industrial uses on individual parcels.

HEX Recommendation: Approve, subject to the following condition:

Development order plans must demonstrate substantial compliance with the open space chart and MCP prior to development order approval.

DEVIATION 3B: Withdrawn

DEVIATION 3C: Littoral Shelf (Proposed Lakes Only). Relief from LDC §10-418(2)(a) and §10-418(2)(d)3, which requires surface water management systems to provide a planted littoral shelf that mimics the function of a natural marsh; to allow 4:1 littoral shelf. And relief from §10-418(2)(d)3, which allows native wetland trees to be substituted for up to 25% of the total number of herbaceous plants required; to allow native wetland trees to be substituted for 100% of the total number of herbaceous plants required.

HEX Recommendation: Approved, *subject to* the following conditions prior to development order approval:

Development order plans must demonstrate a 4:1 littoral shelf on newly constructed lakes.

Landscape plans must demonstrate a 100% substitution of herbaceous plants to native wetland trees for existing and new lakes to comply with FAA guidelines.

DEVIATION 4A: Street Trees. Deviation from LDC §10-296(e)(2)d which requires Street Trees must be planted on both sides of the road, palm trees may be substituted for a maximum of 50% of required small trees, and trees must be spaced evenly along the frontage and not clustered; to allow required trees to be planted on one side of the road, to allow 100% of the trees to be palm trees, and to allow the palm trees to be clustered.

HEX Recommendation: Approve, *subject to* the following condition:

Landscape plans must depict tree and palm spacing in roadway planting areas as 100% cabbage palms. Cabbage palms may be clustered and must be staggered in height from a minimum of 10-feet to 14-feet.

DEVIATION 4B: Culs-de-Sac. Deviation from LDC §10-296(k)(1), which requires dead-end streets to be closed at one end by a circular turnaround for vehicles; to allow internal roads or accessways to be designed constructed with a hammerhead turnaround as depicted on the MCP.

HEX Recommendation: Approve, *subject to* the following condition:

Developer must demonstrate the hammerhead turnaround is of sufficient length to allow emergency vehicles, as specified by the San Carlos Park Fire & Rescue Services District, to turn around.

DEVIATIONS 5A and 5B: Nonresidential Identification Signs. Deviation from LDC §30-153(2)a and §30-153(2)a.1.ii which requires the development be permitted to have one identification sign equal to one square foot of sign area per face for every one linear foot of frontage to allow:

- a) One additional sign on the Oriole Road frontage, for a total of two ground-mounted developer signs on Oriole Road; and
- b) Two signs on Oriole Road with 200 square feet per sign area per face. This is a deviation of an additional 100 square feet of sign area on Oriole Road.

HEX Recommendation: Approve

DEVIATION 6: Parking Lot Interconnection. Relief from LDC §10-610(e) and §34-2015(2)(f), which requires projects to provide parking lot interconnections for automobile, bicycle and pedestrian traffic; to allow the proposed local roadway as shown on the MCP to serve as the required interconnection for Lots of C-1 through C-6.

HEX Recommendation: Approve

DEVIATION 7: Connection Separation. Relief from LDC §10-285(a), which requires that motor vehicle connection(s) to a road from privately maintained streets, access roads or accessways onto local roads in future suburban areas must be a minimum of 125 feet apart; to allow a connection separation of 60 feet on proposed access roads from anticipated entrances on Tracts "A", C-5, C-6" (proposed commercial"), and to allow 102 feet on "Sweeney Way" from anticipated entrances on Tracts "B", (proposed commercial") as depicted on the MCP.

HEX Recommendation: Approve

Exhibits to Conditions:

B1 MCP dated 9/28/2023

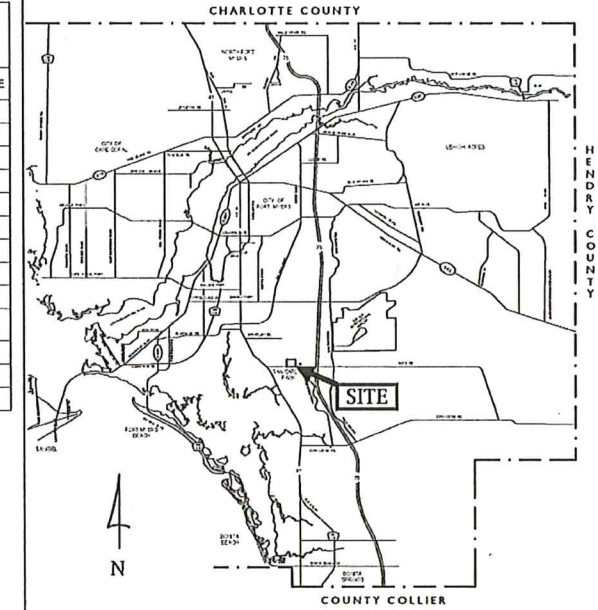
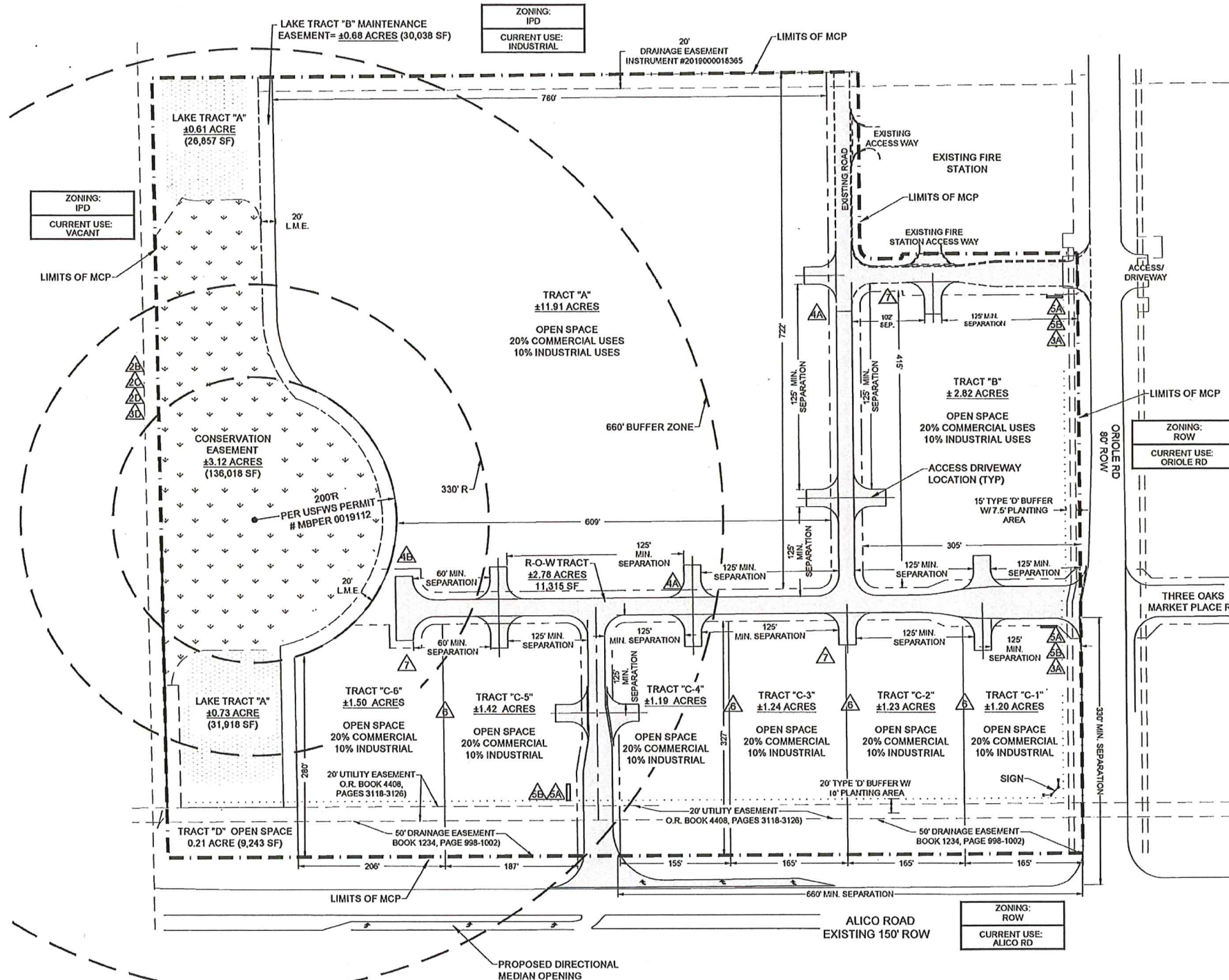
B2 Bald Eagle Management Plan dated 5/11/2023

B3 Open Space Chart

ALICO ORIOLE WEST

LOCATED IN SECTION 04, TOWNSHIP 46-S, RANGE 25-E, LEE COUNTY, FLORIDA

MASTER CONCEPT PLAN



LOCATION MAP

(NOT TO SCALE)

PROJECT SUMMARY:

ZONING
AG-2 to MPD

STRAP #'s
04-46-25-L3-00003-0020

PROJECT ACREAGE
30.64 ACRES (1,334,896 SF)

PROJECT INTENSITY
MAX BUILDING FLOOR AREA = 350,000 SF
MINIMUM 30,000 SF COMMERCIAL
MINIMUM 30,000 SF INDUSTRIAL

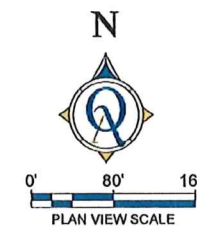
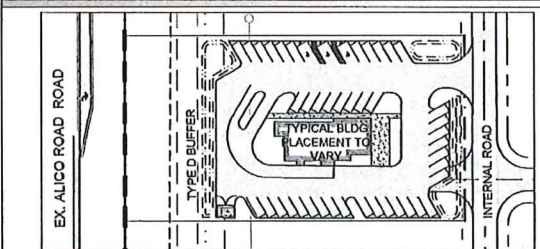
OPEN SPACE
COMMERCIAL USES: 20%
INDUSTRIAL USES: 10%

CONSERVATION AN LAKE AREA
4.46 ACRES

DEVIATIONS



TYPICAL LOT LAYOUT:



Quattrone & Associates, Inc.
Engineers, Planners, & Development Consultants
4301 Veronica Shoemaker Blvd. | Fort Myers, FL 33916 | 239.936.5222 | QALnc.net

EXHIBIT B-1

EXHIBIT B2

ALICO ORIOLE WEST, MPD
DCI2022-00061 -Major PD

Bald Eagle Management Plan
Eagle Nest LE093
11 May 2023

Owner
Horowitz Sanford I, TR FOR Land Trust
d.b.a. Three Oaks Horowitz LLC
Alan Freeman, Trustee
28120 Hunters Ridge Blvd, Suite 5
Bonita Springs, FL 34135

Preparer
Synecological Analysts® Inc.
2159 Morning Sun Ln
Naples, FL 34119

Table Of Contents

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5.	Monitoring and Reporting Requirements	Page 11

Attachments

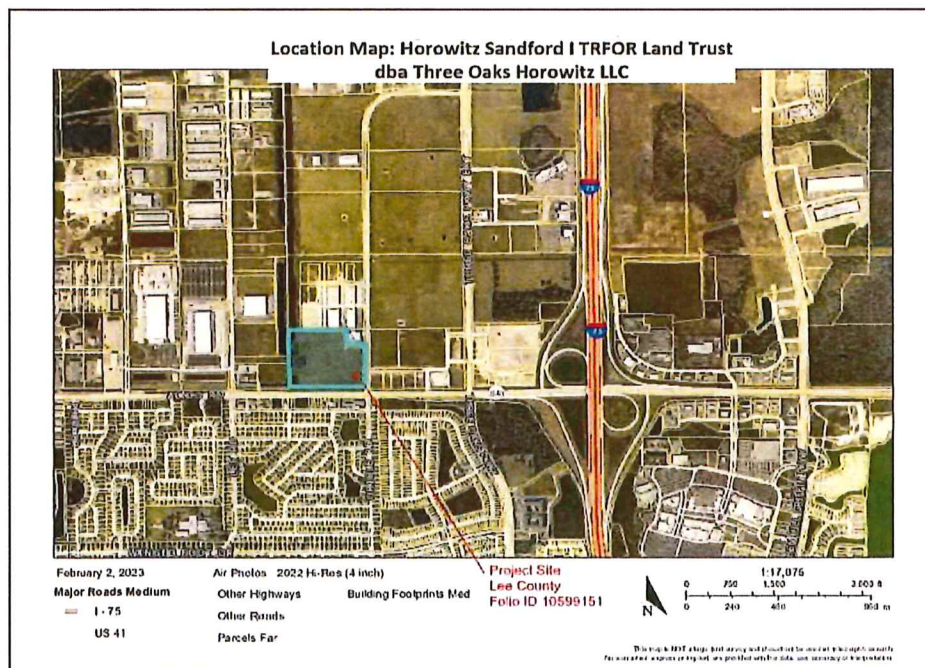
1	Eagle Buffer Planting Exhibit
2	Short-Term Eagle Incidental Take Permit No. MBPER0019112
3	LE093 Nesting History
4	Alternate Eagle Nest/Perch Trees Exhibit
5	Eagle Flight Pattern Exhibits
6	MCP

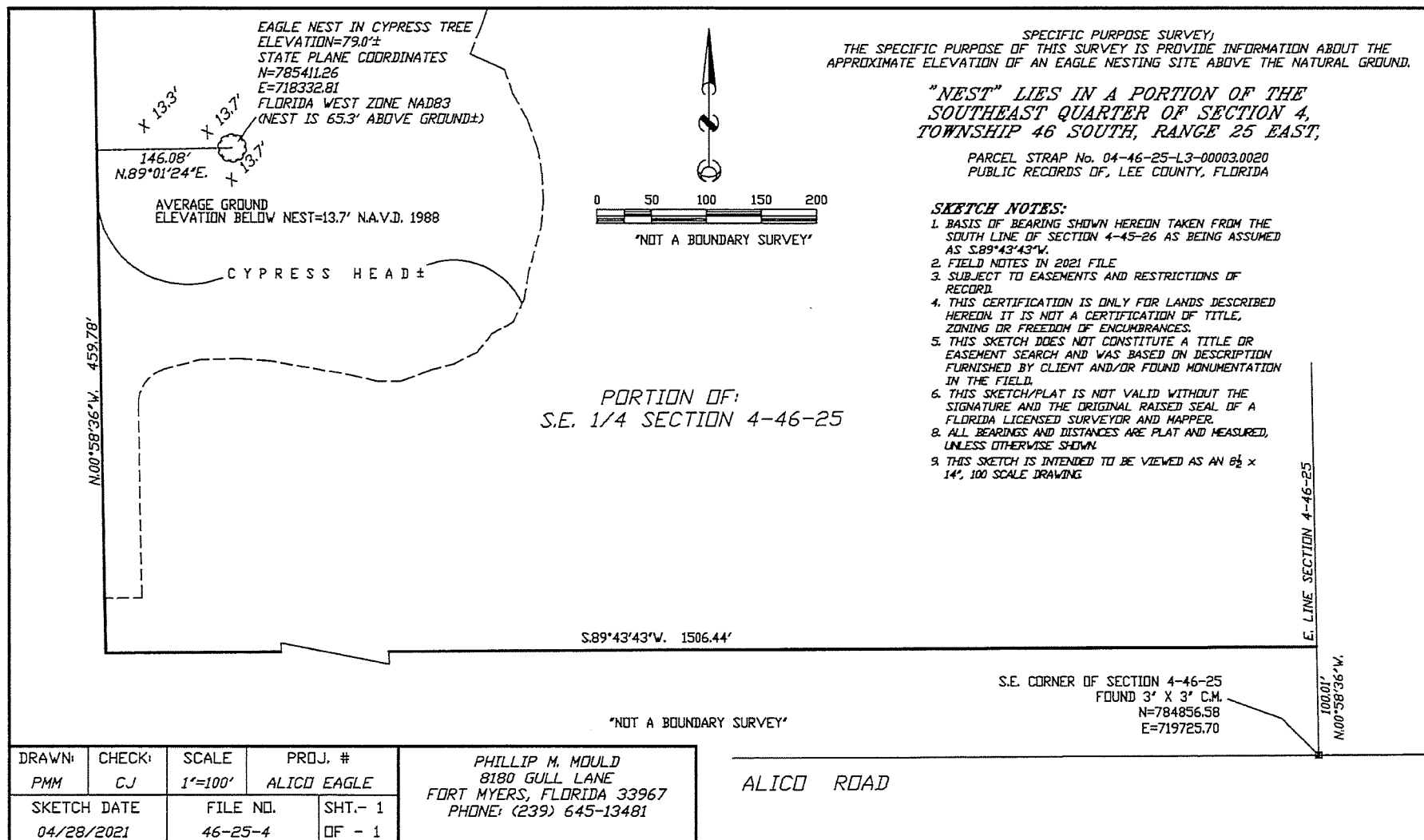
Background and Introduction

Three Oaks Horowitz LLC is seeking approval to develop the Alico Oriole West MPD project on this approximately 29.16 ac parcel (STRAP 04-46-25-L3-00003.0020). This parcel is bordered by a fire station, industrial park and vacant land to the north, Oriole Rd to the east, Alico Rd to the south, and water management areas and vacant land to the west. This site has both State (SFMWD Permit No. 36-0568-P) and Federal (No Permit Required SAJ-2006888) wetland approvals. All wetland impacts have been mitigated consistent with these approvals.

Nest LE-093 has been active since the 2012-13 nesting season. This nest occurs in a recorded Conservation Easement that was created by the previously referenced SFMWD ERP permit. The nest is located in a large cypress tree at elevation 79'+-, State Plane Coordinates N= 785411.26 E= 718332.81. The nest is located 65.3' above ground. The nest has been destroyed by storms and rebuilt multiple times over the years. Most recently, Hurricane Ian damaged but did not destroy this nest. The nesting pair repaired the damage soon thereafter and the nest is observed to be active.

This Eagle Management Plan is intended to facilitate both the long term habitat quality for this pair of nesting eagles and responsible development of the parcel as proposed. The applicant has been granted a Short Term Eagle Take Permit No. MBPER00119112. This permit allows for development of this project within portions of the buffer zones, consistent with Permit Conditions/guidelines and minimization protocols. The conditions of this permit will be discussed in more detail in subsequent sections.





Existing Conditions

Synecological Analysts® (SAI) conducted an Environmental Assessment on this site. SAI evaluated this property to determine distribution, extent, and character of vegetational communities. Habitat types, jurisdictional wetland status, potential or presence of listed species, and suitability of the on-site habitat for listed species habitat were also evaluated. Soil types, distribution and extent were determined to assist in other evaluations.

All native communities except the Cypress head (FLUCCS 621) have been disturbed over an extended period of time as a result of agricultural activities and creation of drainage/road networks. This disturbance influenced the majority of this site and occurred in progressive fashion.

The Alico Oriole West site is not a pristine area that approximates the pre-development character of this general area. Plant communities and habitat have been severely impacted over time by ongoing AG activity. Most of the non-Cypress canopy and much of the Saw palmetto upland shrub strata are largely absent. Regional and area drainage has been massively disrupted by construction of I-75 and the Airport canal. Cycles of fire and renewal have been absent from this site for decades.

Plant communities and land uses were identified according to the Florida Department of Transportation (FDOT1999) Florida Land Use, Cover, and Forms Classification system (FLUCCS) protocol.

FLUCCS 211 - Improved Pasture

This upland habitat type is found in both the primary and secondary buffers of the bald eagle nest tree and contains several shallow ditches/swales that were part of the historic agricultural use. The canopy is mostly open with scattered live oak (*Quercus virginiana*), laurel oak (*Quercus laurifolia*), and slash pine along the edges. The subcanopy is mostly open with scattered Brazilian pepper (*Schinus terebinthifolius*) and cabbage palm (*Sabal palmetto*). The groundcover is dominated by Bahia grass (*Paspalum notatum*), with scattered Spanish needles (*Bidens alba*), false buttonweed (*Spermacoce verticillata*), ragweed (*Ambrosia artemisiifolia*), broomsedge (*Andropogon virginicus*), caesarweed (*Urena lobata*), dog fennel (*Eupatorium capillifolium*), smutgrass (*Sporobolus* spp.), and other various opportunistic weedy species. Commonly observed vines include greenbriar (*Smilax* spp.), and grapevine (*Vitis rotundifolia*).

FLUCCS 616 - Inland Ponds and Sloughs

This area is a human constructed conservation area and water management system and mimics closely these Inland Ponds and Sloughs systems occurring naturally. The dominant shrubs are Wax myrtle and Willow. Herbaceous components include Maiden cane, Sawgrass, and a wide variety of sedges and rushes. This area is excluded from cattle grazing.

FLUCCS 621 - Cypress

This community occurs as isolated heads in the central portion of the western conservation area site. (The Eagle nest is located in this area)

FlucCs	Description	Area (ac)
211	Improved Pastures	23.75
621	Cypress	1.32
742	Borrow Areas	0.09
616	Inland Ponds and Sloughs	4.00



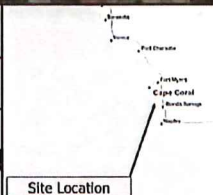
ENVIRONMENTAL EVALUATION AND ADVOCACY

2159 Morning Sun Lane
NAPLES, FLORIDA 34119
PHONE: (239) 514-3998
www.synecol.com

PROJECT: West Oriole Marketplace - FlucCs Map

DATE: March 29, 2022

DRAWN BY: NW



0 100 200 ft



Along the southeast and northeast boundary of the 621 area, larger areas occur. Bald Cypress (*Taxodium distichum*) and Pond Cypress dominate the canopy. Scattered Slash pine occur within this cypress matrix. Swamp bay and Dahoon characterize the shrub stratum along the margins. Representative herbaceous components include Swamp Fern and Laurel greenbrier. The canopy in this community is mature Pond Cypress varying between 65' to 75' in height. There are two primary perch trees at the north and south sides of this head. These perch trees are 68' and 75' tall, respectively. Their location is shown on the following pages. There are 5-8 trees in this head that could be considered as adequate as nest trees. If this pair relocates the nest there are several trees that would be adequate for this use.

The shrub canopy is largely Cabbage palm, with considerable composition of Dahoon holly, Pond apple, Buttonbush and Willow. These trees are on the order of 10-20' in height. Because this area is a preserve, exotic control has been ongoing and the exotic component limited. The herbaceous strata includes Maidencane, *Spartina Bakerii*, Bushybeard bluestem and swamp fern.

FLUCCS 742 - Borrow Area

Borrow areas for cattle watering cover approximately 0.1 acres of this site and are essentially devoid of emergent vegetation.

Management Plan

Regulatory basis of activities have resulted in the issuance of an Incidental Take Permit for bald eagles through the USFWS Eagle Permit (Eagle Permit) process under 50 C.F.R. 22.26. The 2007 FWS National Bald Eagle Management Guidelines ("Guidelines") provide guidance regarding options to minimize disturbance (impacts) to bald eagles. The Bald and Golden Eagle Protection Act discourages eagle disturbance. The Federal Take Permit and County Eagle Management Plan provide guidance to minimize such disturbance. On April 20, 2017, the Florida FWC approved revisions to the state's bald eagle rule (68A16.002, F.A.C.). That became effective on June 22, 2017. The result of this revision is that only a Federal permit is required for activities with the potential to take or disturb bald eagles or their nests. This Bald Eagle Management Plan reflects necessary minimization and Special Conditions set forth in the Short-Term Eagle Incidental Take Permit obtained for the project. Two zones have been created, 330' and 660' feet from nest LE093, each of which has differing levels of restrictions as to the proposed development and timing of constructions.

Proposed Conservation Measures Within 660'

What conservation measures are proposed within 660' during nesting season?

1. If exterior construction work or project activities outlined in Condition D of the USFWS Take Permit are conducted when the nest is in use: (Note: nest in-use generally refers to the bald eagle nesting season (October 1 - May 15) but use may occur earlier if nesting is initiated prior to October 1 and may end earlier or later than May 15, dependent upon date of successful fledging of young or documented nest failure)

a. Initiate a noise abatement program for construction personnel within 660' of the eagle nest to include:

aa. No excessive and/or sudden loud noise including engine braking, tailgate banging, loud radios, shouting/singing, etc.

ab. All motorized equipment, including saws or other handheld power tools, must be moved indoors if possible or placed to minimize noise at and reflect noise away from the direction of the eagle nest, i.e. behind a temporary structure that reflects noise away from the direction of the eagle nesting area.

ac. Minimize the need for reverse indicator horns and utilize ground flag crews or guides to the degree practicable to avoid using reverse indicator horns.

ad. Provide signage in English and Spanish indicating the need for quiet to the extent practicable.

2. A proposed vegetational visual screen (See Eagle Buffer Planting Exhibit attached) will be installed when the nest is not in use.

3. The previously described landscape/visual buffer.

4. The nesting tree is located in a conservation area, behind a large berm. Based on many hours of nest observation over multiple nesting seasons, these birds are most sensitive to human activity. Planes, buildings, people in association with buildings or equipment do not typically focus the birds attention. Based on this extensive period of observation, it seems likely proposed buildings present no consequential restraint on the birds normal activity and flight patterns so long as the proposed vegetational planted buffer is installed/maintained. Please refer to the wind row base figures showing primary flight sectors to and from this nest.

5. No active external construction within 330' of the nest when the nest is active (nesting season historically Oct 1 through May 15).

6. On-site signage regarding the urgency of being quiet during the nesting season.

Proposed Activities Between the 330' - 660' Buffer of LE093

The onsite development and associated utilities needed to support the onsite development, located between 330' and 660' of the eagle nest, are presented below.

If any exterior construction or project activities within this zone need to occur when the nest is in-use during nesting season (October 1- May 15), the following restrictions/ management practices will be utilized:

1. A traffic/noise abatement program will be initiated for construction personnel, which includes:
 - a. no excessive and/or sudden loud noise, including engine braking, tailgate banging, loud radios, shouting, singing, etc.
 - b. All motorized equipment, including saws or other handheld power tools must be moved indoors if possible or placed to minimize noise at and reflect noise away from the direction of the eagle nest tree
 - c. Minimize the need for "reverse" indicator horns and utilize ground flag crews to the degree practicable to avoid using reverse indicator horns.
 - d. Provide signage in English and Spanish emphasizing the need for quiet to the extent practicable.
 - e. A staging area for equipment and parking/ car pool location for construction or project personnel will be established outside of 330' of the eagle nest tree.
2. This nest will be censused twice weekly as nesting season approaches to document arrival of the nesting pair. Once an eagle is observed, monitoring will be conducted up to three times a week for a minimum of 90 minutes each to document nest status and eagles reactions to any ongoing work. Monitoring will occur on days that construction is ongoing and in process to the extent possible. Monitoring may be reduced to one day per week five weeks post hatching, with concurrence from County staff.

Activities Between the 200' - 330' Buffer of LE093

Exterior construction, heavy landscaping, and associated activities are prohibited within 330' of the nest tree when the nest is in-use during nesting season. The developers will comply with this restriction, resulting in the need for the proposed outdoor work between 200' - 330' of the nest tree to occur only when the nest is not in-use.

Between the 0' - 200' (No Development) Buffer of LE093

No development is proposed on the Alico Oriole West site within 200' of LE093. The Eagle Buffer Planting Exhibit attached shows ±1.3 acres of undeveloped land to remain around the nest tree within the Alico Oriole West site. Per Lee County Development Code requirements, invasive vegetation will be removed within the entire development area, including this buffer zone. This exotic control is also mandated by the existing SFWMD permit for this site. Such invasive removal will only occur outside of the bald eagle nesting season and when the nest is not in-use.

Minimization Measures to Limit Incidental Take

In accordance with Eagle Incidental Take Permit MBPER0019112, the following measures will be implemented by the developer to help minimize disturbance to eagle nest LE093:

1. Prior to construction of the proposed work within 660' of the eagle nest tree, educational materials that outline how to minimize disturbance to eagles, along with contact information for the local eagle rehabilitator, will be prepared and provided to project personnel, tenants occupying any building located within 660'

of the nest tree, and maintenance personnel responsible for the post-project maintenance of the project area within 660' of the nest tree.

2. All project related exterior or temporary construction lighting, if used, will be shielded/directional in nature so that lights do not shine directly onto the eagle nest.
3. If using pesticides, herbicides, or other chemicals onsite, State and federal BMP's, laws and label instructions will be followed at all times.
4. Overhead utility lines will be coordinated to be in compliance with the Avian Power Line Interaction Committee (APLIC) Guidelines found at www.aplic.org to reduce the potential for any electrocution, collision, and/or nesting of avian species.
5. The proposed Eagle Buffer Planting between the wetland area where the eagle nest is located and the proposed development extends over 549 linear feet along the existing berm (Attachment 1). The applicant proposes to install fifteen (15) Pines ("Densa") 12 feet on center [in five groups of 3], thirty (30) Sabal Palms [in six groups of 5], and in addition forty-six (46) Walter's Viburnum #3 under the Sabal Palms as shown on the attached Eagle Buffer Planting Exhibit. The goal is to create a visual buffer between LE093 and the proposed development. These plants will have an irrigation system installed to support their vigor and growth. The location and extent of this buffer is shown in Attachment 1. The purpose of the plantings is to shield both the perch trees and nest to the human activity located in the development to the east of the nest. Based on our observations of this nesting pair they are not influenced by equipment, traffic or noise. Human presence/activity focuses their attention. Plant materials selection for this visual screen/buffer were based on several factors. These included a selection of native trees and plants, canopy density and extent, evergreen/deciduous comparisons, growth form of mature trees, sustainability with regard to extreme weather events and the location on the top of an existing berm. We implemented the recommendation in the US FWS Eagle Take Permit to "enhance and expand the visual vegetation buffer between construction activities and the eagle nest tree by planting native pines and/ or hardwoods". It is worth noting that our observations included periods when the cypress trees surrounding the nest tree had foliage as well as periods when the leaves had

dropped. We also have experience with eagle nests in areas dominated by slash pine. Based on the available plant materials of a size needed for the buffer along canopy density and sustainability, we considered a short list of cypress, oak (both laurel and live oak), slash pine and palms. Our selection of pines and sabal palms was based on the following factors:

- a. Appropriate and available native trees and shrubs,
- b. The lack of canopy density during a good part of the nesting season,
- c. Severe weather event survivability, and
- d. Lack of an extensive root systems to support the trees, particularly in severe weather events,

We selected the Pines and Sabal Palms after consultation with the Lee County Eagle Technical Advisory Committee as they have a stable canopy density, good sustainability through extreme weather events, a compact and dense root system, and sufficient density based on the available native species with a single row of plants. We believe we understand the unusual nature of doing an eagle buffer planting plan and we also understand the sole purpose of this planting effort is to improve the quality of life for this nesting pair of eagles or others that might occupy this nest over time. This is not a landscape requirement and is being installed on top of a berm. We think the benefit to occupants of LE 093 makes this Eagle Buffer Planting Plan the optimal, available native planting solution to creating a dense, sustainable visual screen/buffer that maintains or improves quality of life for these eagles, complies with the policies of the Eagle Take Permit and the Lee County eagle buffer policies, and allows responsible development of the nearby parcel at the NW corner of Alico Rd. and Oriole Rd.

Monitoring and Reporting Requirements

The Federal Take Permit relative to this nest requires a qualified biologist to monitor eagle use of the nesting territory defined as up to a 1.5-mile radius of eagle nest LE093, onsite that is legally accessible by the developer and where the activities occur. The monitor will be experienced in recognizing specific patterns and changes of eagle behavior and employed by or contracted by the permittee, landowner, company, or entity responsible for having the activity monitored. The monitor will be as inconspicuous as possible, so not to cause a disturbance with his/her presence, and when applicable, a wildlife blind or viewing location out of direct sight of the eagle will be utilized.

Monitoring will be conducted at a distance that allows for observation without an interruption in the eagle's normal breeding behavior. If the eagles do not return to the known nest location (LE093), the site will be monitored to assess whether or not the eagles nest, roost, and/or forage at a new location.

If a new eagle nest is built on the site or within the nesting territory, the monitor will report the new eagle nest location within 10 days to the FWS Southeast Region Eagle Biologist and ETAC through the assigned Lee County personnel.

Monitoring will be conducted in the methodology previously described under the monitoring requirements for work within the 330'-660' buffer zone of the eagle nest, with the monitor using the FWS Bald Eagle Monitoring Data Report to record ongoing construction activities and eagle behaviors observed during each monitoring event. This information will be compiled onto the Eagle Take Annual Report Form (found online at www.fws.gov/forms/3,202-15.pdf) and submitted annually to the FWS (submitted electronically to FW4eaglemonitoring@fws.gov and mailed to the migratory bird permit issuing office) and ETAC through the designated Lee County personnel.

The FWS Eagle Incidental Take Permit remains valid through September 30, 2025. However, if full construction on the subject site is complete prior to expiration of the federal permit, the FWS may be notified to have the permit closed accordingly. Lee County will be copied on all related Federal correspondence. Monitoring and reporting will continue in accordance with this Bald Eagle Management Plan contained herein, including Condition # 2 for monitoring between 330' and 660' contained above, and the referenced federal permit through completion of construction within 660' of the nest tree and close-out of the federal permit. The applicant understands that these compliance commitments at both the Federal, State and Local levels will transfer to any and all owners and users going forward. Regarding requirements of the approved eagle management plan and the state and federal eagle protection laws.

ATTACHMENTS



SHORT-TERM EAGLE INCIDENTAL TAKE

Permit Number: MBPER0019112

Version Number: 0

Effective: 2021-11-23 **Expires:** 2025-09-30

Issuing Office:

Department of the Interior
U.S. FISH AND WILDLIFE SERVICE

MB Atlanta Permit Office
1875 Century Boulevard, NE
Atlanta, Georgia 30345
permitsR4MB@fws.gov
Tel: 404-679-7070
Fax: 404-679-4180

**Carmen
Simonton**

Digitally signed by

Carmen Simonton
2021-11-23 12:53:56

Chief, Migratory Bird Permit
Office, Atlanta, Georgia

Permittee:

Horowitz Sanford I TRFOR Land Trust
dba Three Oaks Horowitz LLC
Alan Freeman
28120 Hunters Ridge Boulevard Suite 5
Bonita Springs, Florida 34135

Authority: Statutes and Regulations: 16 U.S.C. 668-668(d), 16 U.S.C 703-712 50 CFR Part 13, 50 CFR 22.26

Location where authorized activity may be conducted:

See Condition D.

Reporting requirements:

Monitoring requirements are outlined in Condition I Monitoring Requirements.

Reporting requirements are outlined in Condition D, E, F, I. and in Condition J Reporting Requirements.

Condition J Reporting Requirements outlines the required schedule of monitoring reports (Condition I3) and the content of the annual summary monitoring report.

Authorizations and Conditions:

Southeast Region Eagle Biologist Ulgonde Kirkpatrick, Ulgonde_Kirkpatrick@fws.gov, (352) 406-6780
Southeast Region Eagle Permit Coordinator Resee Collins, Resee_Collins@fws.gov, (404) 679-4163



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Link to federal permit regulations: <https://www.fws.gov/birds/policies-and-regulations/permits/permit-policies-and-regulations.php>

Eagle nest means any assemblage of materials built, maintained, or used by Bald Eagles or Golden Eagles for the purpose of reproduction.

In-use nest means a bald or golden eagle nest characterized by the presence of one or more eggs, dependent young, or adult eagles on the nest in the past 10 consecutive days during the breeding season.

Alternate nest means one of potentially several nests within a nesting territory that is not an in-use nest at the current time. When there is no in-use nest, all nests in the territory are alternate nests.

Disturb/disturbance means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

A. General conditions set out in Subpart B of 50 CFR 13, and specific conditions contained in Federal regulations cited above, are hereby made a part of this permit. All activities authorized herein must be carried out in accordance with and for the purposes described in the application submitted. Continued validity, or renewal of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.

B. You are responsible for ensuring that the permitted activity is in compliance with all federal, tribal, state, and local laws and regulations applicable to eagles.

C. Valid for use by permittee named and any subpermittees (See Condition H).

D. Due to all construction activities associated with the development of West Oriole Market Place located north of Alico Road and west of Oriole Road in Fort Myers, Lee County, Florida, you are authorized to:

Take by means of disturbance incidental to your activities (1) pair of nesting Bald Eagles including the loss of productivity of eggs or young due to potential abandonment of the Bald Eagle nest identified as LE093

Eagle Nest LE093 location: 26.494333N, -81.809833W, Fort Myers, Lee County, Florida

Reporting Required: Annual Summary by June 30 of 2022, 2023, 2024, 2025, 2026

Construction activities will be phased over a multi-year period and will include adding fill dirt to property; building a foundation, multiple warehouse and commercial buildings, and associated infrastructure.

The project impacts are occurring within the 660-foot buffer zone around eagle nest LE093. The closest construction is occurring no closer than 200 feet from the eagle nest tree at any time of the year.

The authorizations granted by this permit apply only to take that results from activities conducted in accordance with the description contained in the permit application and the terms of the permit. If the permitted activity changes, you must immediately contact the Eagle Biologist to determine whether a permit amendment is required in order to retain take authorization.

E. This permit does not authorize intentional take or injury of any live eagles, excluding take of eggs or young by nest abandonment as described in Condition D, nor does it authorize take of any eagle nest.



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4. To the extent practicable, construction or associated project activities farthest from an eagle nest should occur prior to construction or associated project activities closest to the nest.
5. Prior to conducting or while activities in Condition D are occurring, in the event any eagle is injured or is found on the ground, you must provide educational materials that outline how to minimize disturbance to eagles, along with contact information for an eagle rehabilitator to the following:
 - a. All project personnel; and
 - b. Maintenance personnel responsible for the post-project maintenance of the project area described in Condition D.
6. Preserve the largest native pines and hardwoods outside of the project footprint for use as potential eagle roost or nest sites.
7. Maintain and/or create, enhance or expand the visual vegetation buffer between construction activities and the eagle nest tree by planting **native** pines and/or hardwoods.
8. Down-shield all new permanent exterior lighting so that lights do not shine directly onto the eagle nest.
9. Follow state and federal guidelines, laws and label instructions at all times if using pesticides, herbicides, or other chemicals on property identified in Condition D.
10. If applicable, coordinate the design and construction or retrofitting of new and existing utility lines to be in compliance with the Avian PowerLine Interaction Committee (APLIC) Guidelines found at www.aplic.org to reduce the potential for any electrocution, collision and/or nesting of avian species.

H. Subpermittees.

1. Any person who is employed by or under contract to you for the activities specified in this permit, or otherwise designated a subpermittee by you in writing, may exercise the authority of this permit.
2. A subpermittee is an individual to whom you have provided written authorization to conduct some or all of the permitted activities in your absence. Subpermittees must be at least 18 years of age.
3. Any subpermittee who has been delegated this authority may not re-delegate to another individual/business.
4. You are responsible for ensuring that your subpermittees are qualified to perform the work and adhere to the terms of your permit. You are also responsible for maintaining current records of designated subpermittees. As the permittee, you are ultimately legally responsible for compliance with the terms and conditions of this permit and that responsibility may not be delegated.
5. You and any subpermittees must carry a legible copy of this permit and display it upon request whenever exercising its authority.

I. Monitoring Requirements.



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You must immediately notify the Southeast Region Eagle Permit Coordinator by phone and email upon discovery of any unanticipated take or regarding any apparent injury or death occurring to any eagle, including viable eggs or young, for any reason during project activities. You must immediately contact the Conservancy of Southwest Florida von Arx Wildlife Hospital, 1495 Smith Preserve Way, Naples, Florida. 34102, (239) 262-0304, to coordinate transportation of any injured eagle.

F. You are authorized to salvage eagle feathers found on the ground in the vicinity of the Bald Eagle nest located in Condition D. Any salvaged items found at the site must be shipped within 30 days to the National Eagle Repository, Contact: U.S. Fish and Wildlife Service, National Eagle and Wildlife Repository, RMA, Bldg. 128, 6550 Gateway Road, Commerce City, Colorado, 80022, (303) 287-2110.

You must immediately notify the Southeast Region Eagle Permit Coordinator by phone and email upon discovery of any eagle carcass(es) at the location listed in Condition D.

G. You must comply with the following avoidance or minimization measures prescribed by this permit for take of eagle(s) identified in Condition D. All minimization measures, unless noted otherwise, are applicable when any eagles are present at the nest site and the nest meets the definition of an in-use nest during the Bald Eagle nesting season (October 1 – May 15); or when the nest is in-use before October 1 or after May 15:

1. Eagle Nest Buffer. You will erect a temporary protective barrier to delineate the 200-foot buffer around the eagle nest tree to prevent construction personnel and heavy equipment from entering into this buffer while any construction or associated project activities outlined in Condition D are occurring. All exterior development and heavy equipment access is strictly prohibited in this area. Exclude human access by foot or vehicle within 200 feet of the eagle nest tree when the nest is in-use.

2. FOR ACTIVITIES WITHIN 660 FEET OF THE EAGLE NEST TREE:

a. If exterior construction work or project activities outlined in Condition D are conducted when the nest is in-use:

(1) Initiate a noise abatement program for construction personnel within 660 feet of an eagle nest, to include:

- (a) No excessive and/or sudden loud noise, including engine braking, tailgate banging, loud radios, shouting, singing, etc.;
- (b) All motorized equipment, including saws or other handheld power tools, must be moved indoors if possible or placed to minimize noise at and reflect noise away from the direction of the eagle nest, i.e. behind a temporary structure that reflects noise away from the direction of the eagle nesting area;
- (c) Minimize the need for "reverse" indicator horns and utilize ground flag crews to the degree practicable to avoid using reverse indicator horns; and
- (d) Provide signage in English and Spanish (if applicable) indicating the need for quiet to the extent practicable; and

3. FOR ACTIVITIES BETWEEN 660 AND 330 FEET OF THE EAGLE NEST TREE:

a. If any construction work or project activities outlined in Condition D are conducted when the nest is in-use, you must initiate a traffic abatement program which includes that you establish equipment staging and offsite parking/carpool locations for construction personnel outside of 330 feet from the eagle nest tree.



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1. A qualified monitor is required to monitor eagle use of the nesting territory, which is defined as up to a 1.5 mile radius of the eagle nest identified in Condition D, on property that is legally accessible by you and where the activities outlined in Condition D. occur. The monitor must be experienced in recognizing specific patterns and changes of eagle behavior, and employed by or contracted by the permittee, landowner, company or entity responsible for having the activity monitored. The monitor must also be as inconspicuous as possible, so not to cause a disturbance with their presence, and when applicable, a wildlife blind or viewing location out of direct sight of the eagles is recommended.

Monitoring must be conducted at a distance that allows for observation without an interruption in the eagle's normal breeding behavior. If eagles do not return to the nest at the location described in Condition D, you are required to monitor on adjacent property that is accessible by you to assess whether or not eagles nest, roost and/or forage at a new location.

If a new eagle nest is built on the property described in Condition D. or within the nesting territory, you must report that new eagle nest location within 10 days to the Southeast Region Eagle Biologist. Additional monitoring and authorization may be required based on the new eagle nest location in relation to activities described in Condition D.

2. Monitoring must occur at a time of day when eagles are most likely to be in the area, (early morning, beginning ½ hour before sunrise, or late afternoon, beginning ½ hour before sunset). You must assess whether or not eagles return to the nesting territory as identified in Monitoring Requirements No.1 and continue to nest, roost and/or forage there, and/or if the eagles attempt to build or occupy another nest. Monitoring must be conducted for a minimum of 60-90 minutes.

3. Once project activities have begun, including if construction activities have begun but are not occurring, monitoring is required annually to determine eagle nesting activity and/or nest failure. During each nesting season, no additional monitoring is required once eaglets have fledged from the nest or nest failure is documented.

The required monitoring period is:

- During each eagle nesting season, defined as October 1 through May 15, or when eagles are present at the nest and
- For an additional (1) nesting season after project has been completed.

Monitoring must be conducted according to the following Eagle Monitoring Schedule:

Frequency	Eagle Monitoring Schedule	Time	Time of Day
Once	November	60 – 90 minutes	Begin ½ hour before sunrise or before sunset
Once	Between December 15 and January 15	60 – 90 minutes	Begin ½ hour before sunrise or before sunset
Once	Between February 15 and March 15	60 – 90 minutes	Begin ½ hour before sunrise or before sunset
Once	April	60 – 90 minutes	Begin ½ hour before sunrise or before sunset
Once	May	60 - 90 minutes	Begin ½ hour before sunrise or before sunset
Once	Every month after until fledging or nest failure is documented	60 – 90 minutes	Begin ½ hour before sunrise or before sunset

4. Monitoring reports must include the following information:



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- a. Date and length of time Bald Eagles were observed;
- b. Time of day;
- c. Number and age of Bald Eagles observed (i.e. juvenile, immature, subadult, adult); if age is not known provide description;
- d. Observed behavior (e.g. perching, feeding, sitting on or attending nest, in flight);
- e. If a new eagle nest is built on or adjacent to your property, the new location and whether the eagles produced young at that site;
- f. If any eagle nesting attempt was successful, failed or the eagles abandoned the area; and
- g. A description of any human activity at the time eagles are observed during each month of the monitoring period (e.g. construction, road building, use of machinery, etc.).

J. Reporting Requirements.

- 1. You may use Form 3-202-15 (Eagle Take Annual Report) found online at www.fws.gov/forms/3-202-15.pdf to report monthly and annual Bald Eagle monitoring activities. Use of this form is not mandatory, but the same information must be submitted.
- 2. You must annually submit your monitoring reports, including your summary Eagle Take Annual Report (Form 3-202-15), by June 30 of each calendar year a report is required as follows:
 - a. Electronically to FW4eaglemonitoring@fws.gov. The email subject line for each report submitted must reference the permit number, project title or name, and month/year of report, and
 - b. Mailed to the migratory bird permit issuing office at U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345.

If no eagle activity is observed, a report indicating "no activity observed" is required.

If project activities were delayed or not conducted, an annual report indicating "no activities occurred" is required.

50 CFR 22.26 STANDARD CONDITIONS EAGLE TAKE (DISTURBANCE) PERMIT

All of the provisions and conditions of the governing regulations at 50 CFR part 13 and 50 CFR part 22.26 are conditions of your permit. Failure to comply with the conditions of your permit could be cause for suspension of the permit and/or citation. The standard conditions below are a continuation of your permit conditions. If you have questions regarding these conditions, refer to the regulations and forms, or to obtain contact information for your issuing office, visit: <https://www.fws.gov/birds/policies-and-regulations/permits.php>

- 1. This permit does not authorize you to conduct activities on federal, state, tribal or other public or private property without additional prior written permits or permission from the agency/landowner.
- 2. You remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit. Provisions for discontinuance of permit activity are outlined in 50 CFR 13.26.



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3. You must maintain records as required in 50 CFR 13.46. Your records must also include the data gathered for monitoring and reporting purposes. All records relating to the permitted activities must be kept at the location indicated in writing by you to the migratory bird permit issuing office.
4. Acceptance of this permit authorizes the U.S. Fish and Wildlife Service to inspect and audit or copy any permits, books or records required to be kept by the permit and governing regulations (50 CFR 13.47).
5. You must allow Service personnel or other qualified persons designated by the Service, access to the areas where eagles are likely to be affected by your project activities, at any reasonable hour, and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s) while the permit is valid and for up to 3 years after it expires.
6. The Service may amend, suspend, or revoke a permit issued under this section if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations. This provision is in addition to the general criteria for amendment, suspensions and revocation of Federal permits set forth in 50 CFR 13.23, 13.27, and 13.28 of this chapter.
7. To renew this permit if the activities described in Condition D have not been completed by the expiration date of this permit, permittee must meet issuance criteria at the time of renewal and must also have been in compliance with permit conditions, including all monitoring and reporting requirements of the original permit.
8. You may request amendment to your permit. The Service will charge a fee for substantive amendments made to permits within the time period that the permit is still valid. The fee is \$500 for commercial permittees and \$150 for non-commercial permittees (50 CFR 13.11(d)(4)). Substantive amendments are those that pertain to the purpose and conditions of the permits and are not purely administrative. Administrative changes, such as updating name and address information, are required under 13.23(c), and the Service will not charge a fee for such amendments. Requests for substantive amendment must be submitted via Form 3-200-71.

LE093 Nesting History Exhibit

LE-93: Alico Road

Strap Number: 04-46-25-00-00003.0020

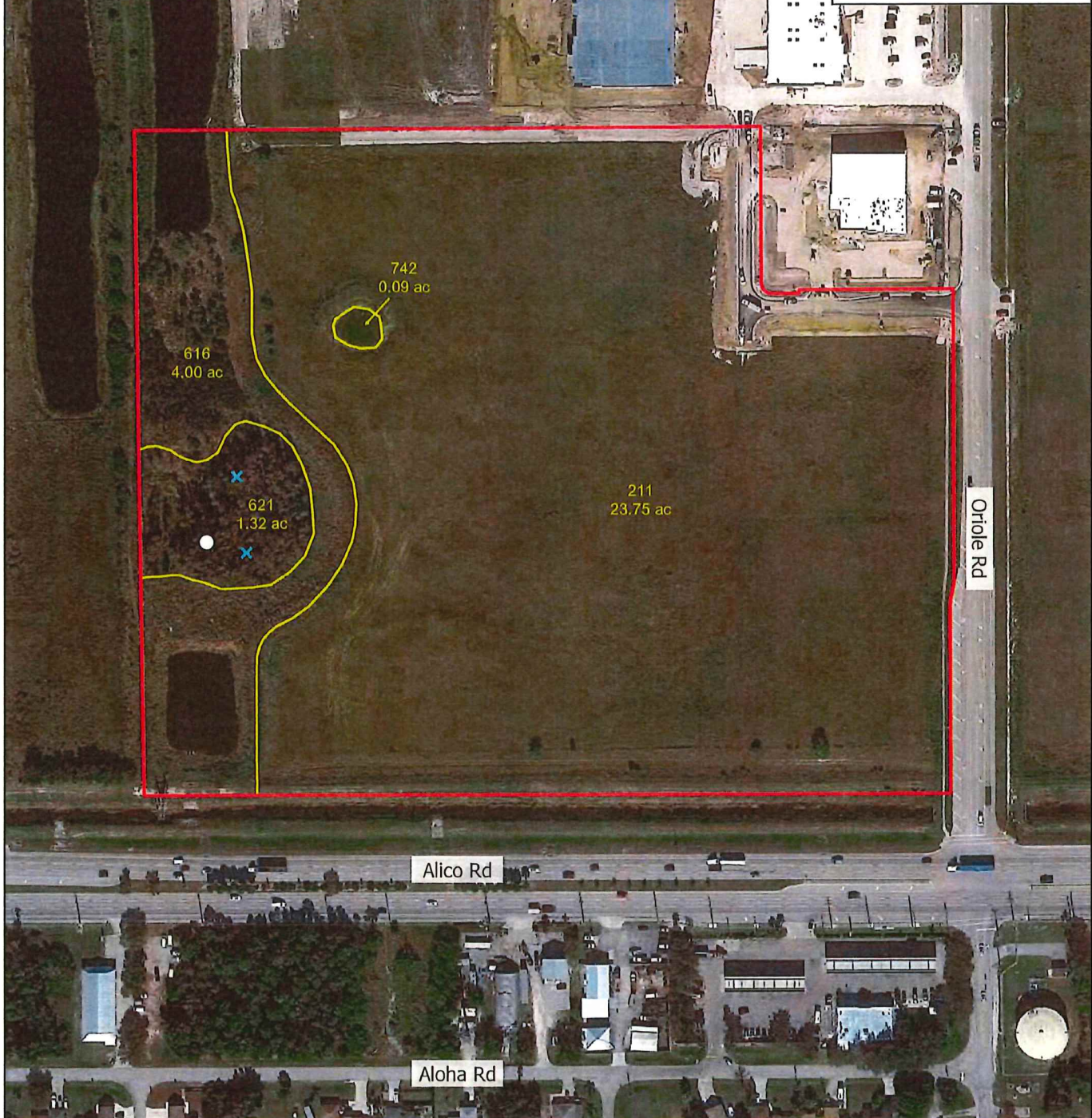
Year	History
2012-2013	Active, 1 Fledgling. Nest in Cypress Tree
2013-2014	Active, Nest Failed. Great Horned owl in nest.
2014-2015	Inactive, Eagles observed in the area but no activity at the nest
2015-2016	Active, 1 Fledgling. Nest was down at the end of the season.
2016-2017	Active, adults constructed nest but no incubation observed.
2017-2018	Active, nest failed. Incubation observed Dec 2017 and adult appeared to be feeding young in Jan 2018. No activity was observed after Jan 2018.
2018-2019	Active, 2 Fledglings confirmed
2019-2020	Active, 1 Fledgling confirmed
2020-2021	Active, 2 Fledglings confirmed

2021 - 2022 Active, fledglings

2022 - 2023 Active, fledglings not observed, but feeding behavior exhibited

FlucCs	Description	Area (ac)
211	Improved Pastures	23.75
621	Cypress	1.32
742	Borrow Areas	0.09
616	Inland Ponds and Sloughs	4.00

- Property boundary
- FlucCs area
- Eagle nest
- x Commonly used perch tree (tree height 68'-75')



2159 Morning Sun Lane
NAPLES, FLORIDA 34119
PHONE: (239) 514-3888
www.synecol.com

PROJECT: West Oriole Marketplace - FlucCs Map

DATE: Feb 27, 2023

DRAWN BY: NW

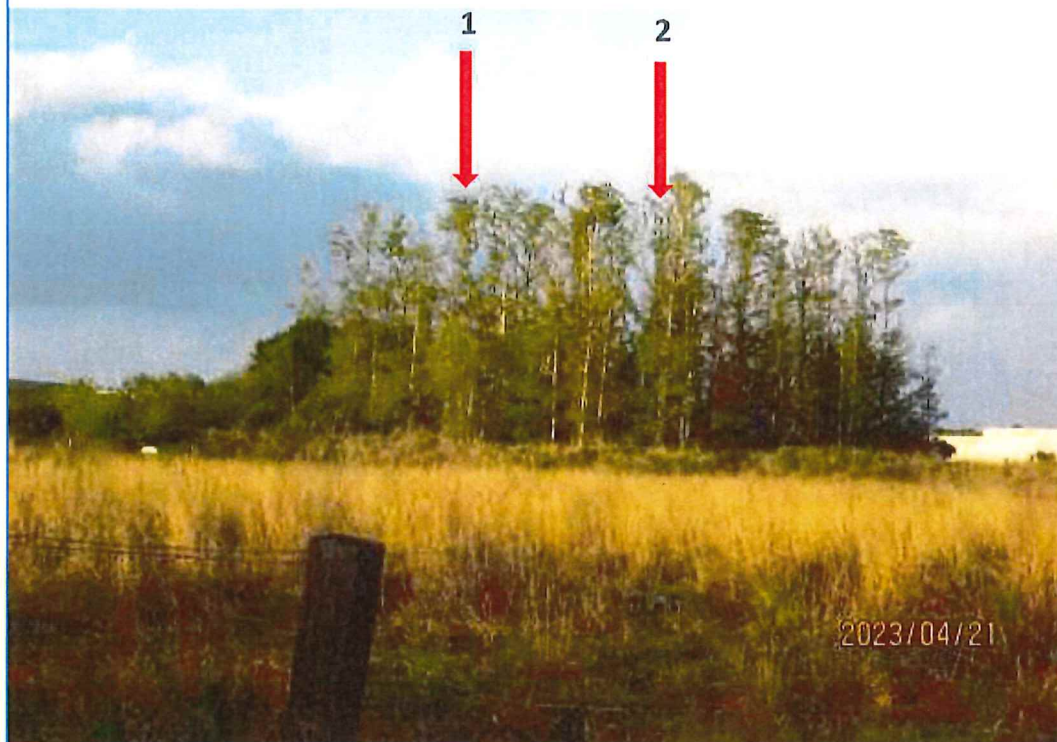


0 100 200 ft



Alternate Eagle Nest / Perch trees

The arrows indicate the perch trees



Tree 1: Height

Tree 2: Height



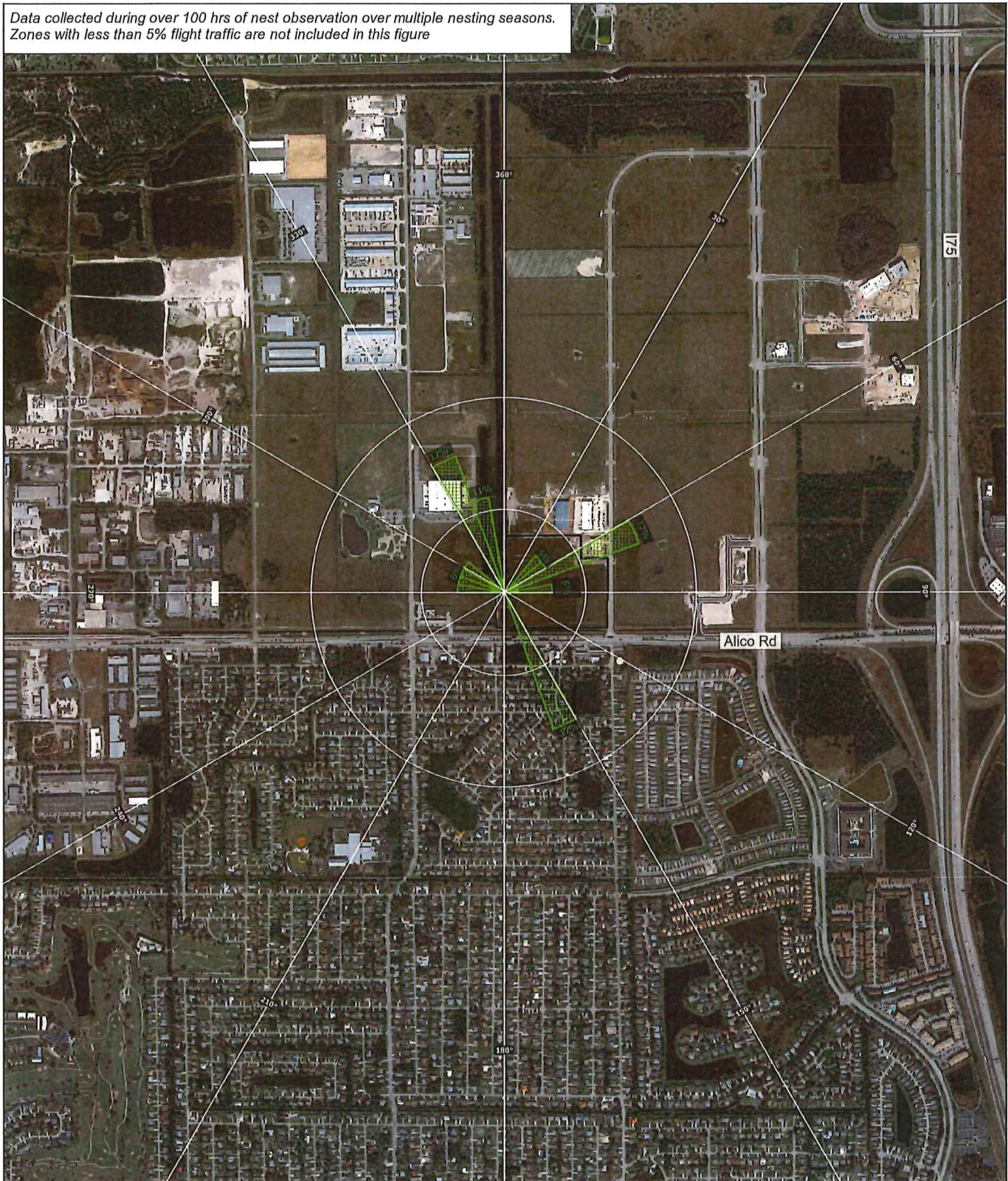
Tree 1

Tree 2



Eagle Flight Patterns

Data collected during over 100 hrs of nest observation over multiple nesting seasons.
Zones with less than 5% flight traffic are not included in this figure



2159 Morning Sun Lane
NAPLES, FLORIDA 34119
PHONE: (239) 514-3998
www.synecol.com

PROJECT: Oriole Alico West Eagle Foraging Area
- Flights To Nest

DATE: May 9, 2023

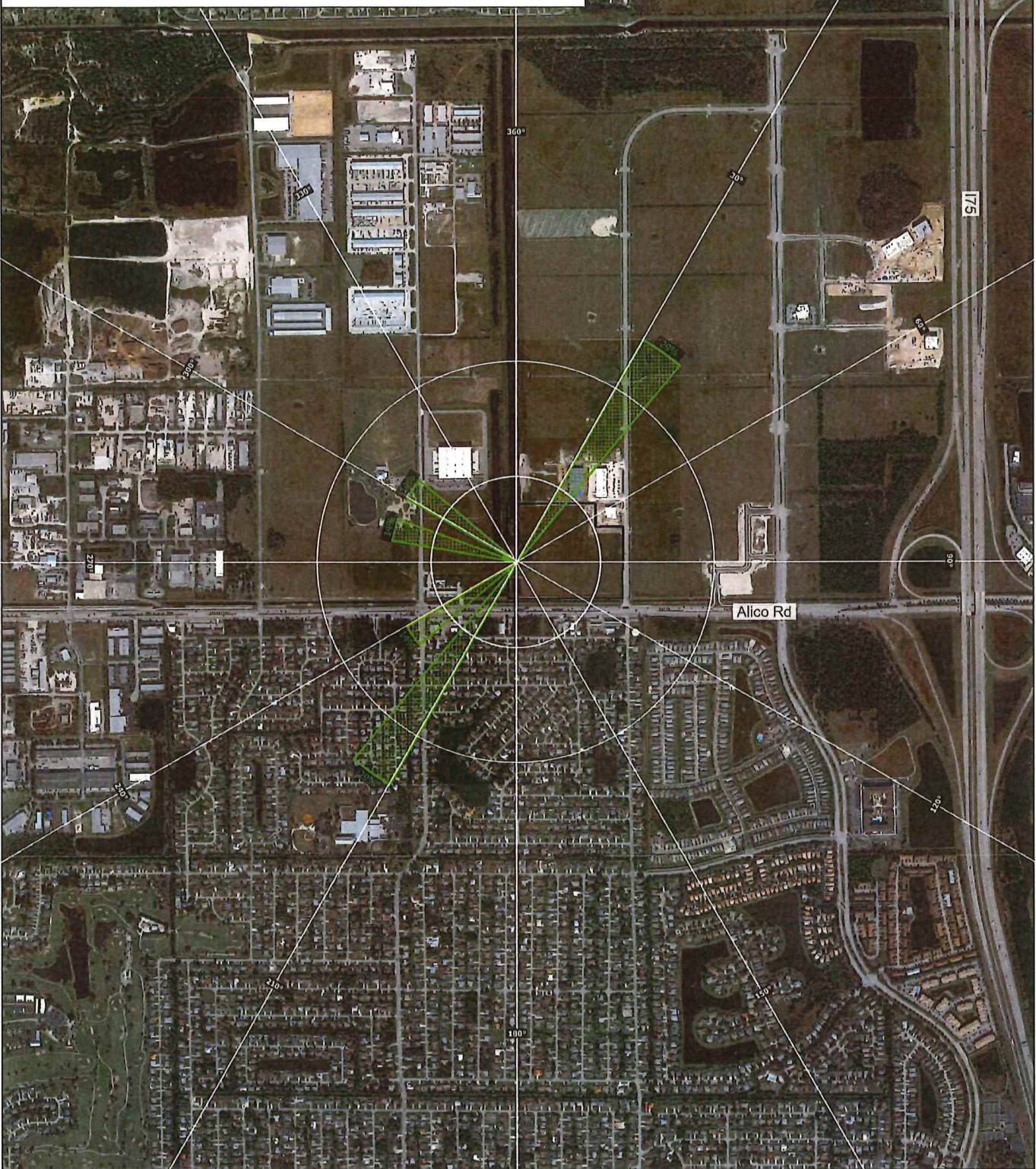
DRAWN BY: NW



0 400 800 1,200 ft



Data collected during over 100 hrs of nest observation over multiple nesting seasons.
Zones with less than 5% flight traffic are not included in this figure



2159 Morning Sun Lane
NAPLES, FLORIDA 34119
PHONE: (239) 514-3998
www.synecol.com

PROJECT: Oriole Alico West Eagle Foraging Area
- Flights From Nest

DATE: May 9, 2023

DRAWN BY: NW



0 400 800 1,200 ft





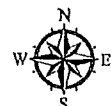
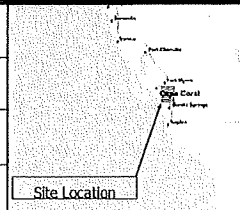
ENVIRONMENTAL EVALUATION AND ADVISORY

2159 Morning Sun Lane
NAPLES, FLORIDA 34119
PHONE: (239) 514-3998
www.synco.com

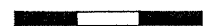
PROJECT: LE 093 Nest Foraging Area Figure

DATE: May 9, 2023

DRAWN BY: NW



0 0.5 1 1.5 mi



LOCATED IN SECTION 04, TOWNSHIP 46-S, RANGE 25 -E, LEE COUNTY, FLORIDA



LOCATION MAP
(NOT TO SCALE)

TYPICAL LOT LAYOUT:



EXHIBIT B3

ALICO ORIOLE WEST MCP AREA			
DESCRIPTION	AREA (AC)	INDUSTRIAL (AC) 10% OPEN SPACE REQUIRED	COMMERCIAL (AC) 20% OPEN SPACE REQUIRED
TRACT A	11.91	1.19	2.38
TRACT B	2.82	0.28	0.56
TRACT C-1	1.20	0.12	0.24
TRACT C-2	1.23	0.12	0.25
TRACT C-3	1.24	0.12	0.25
TRACT C-4	1.19	0.12	0.24
TRACT C-5	1.42	0.14	0.28
TRACT C-6	1.50	0.15	0.30
ROW TRACT	2.78	0	0
CONSERVATION EASEMENT & LAKE TRACT OPEN SPACE	4.46	4.46	4.46
LAKE MAINTENANCE EASEMENT OPEN SPACE	0.68	0.68	0.68
TRACT D OPEN SPACE	0.21	0.21	0.21
TOTAL ACERAGE	30.64	7.60	9.85
PERCENTAGE PROVIDED		24.81%	32.15%
Large Project Open Space Required		20% = 6.13 AC	30% = 9.19AC

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Chahram Badamtchian, Senior Planner, date received September 12, 2023 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Sharon Hrabak with Quattrone & Associates, Inc., to Maria Perez, Chahram Badamtchian, Al Quattrone, dated Monday, September 25, 2023, 5:13 PM (3 pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared by Quattrone and Associates, Inc., for Alico Oriole West Mixed Planned Development Rezoning, Lee County Hearing Examiner Public Hearing, dated Thursday, September 27, 2023 (multiple pages – 8.5"x11)[color]
2. *Written Submissions:* Email from Sharon Hrabak with Quattrone & Associates, Inc., to Zsuzsanna Weigel, Michael Jacob, Esq., Joseph Adams, Esq., Richard Akins, Esq., Anthony Rodriguez, Chahram Badamtchian, Jamie Prancing, Al Quattrone, Yury Bykau, dated Wednesday, September 27, 2023, 5:08 PM (3 pages – 8.5"x11" and 1 page 11"x17")

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Chahram Badamtchian

Applicant Representatives:

1. Richard Akin, Esq.
2. Al Quattrone

Public Participants:

None

Exhibit E
INFORMATION

UNAUTHORIZED COMMUNICATIONS

The LDC prohibits communications with the Hearing Examiner or her staff on the substance of pending zoning actions. There are limited exceptions for written communications requested by the Hearing Examiner, or where the Hearing Examiner seeks advice from a disinterested expert.

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

- A. The Hearing Examiner will provide a copy of this recommendation to the Board of County Commissioners.
- B. The Board will hold a final hearing to consider the Recommendation and record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the final hearing date. Only Parties and participants may address the Board at the final hearing. Presentation by participants are limited to the substance of testimony presented to the Hearing Examiner, testimony concerning the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or allegations of relevant new evidence not known or that could not have been reasonably discovered by the speaker at the time of the Hearing Examiner hearing.
- C. Participants may not submit documents to the Board of County Commissioners unless they were marked as Exhibits by the Hearing Examiner. Documents must have the Exhibit number assigned at hearing.

COPIES OF TESTIMONY AND TRANSCRIPTS

- A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.
- B. A verbatim transcript may also be available for purchase from the court reporting service.