

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Quattrone and Associates, Inc., filed an application on behalf of the property owner, Alan C. Freeman, trustee, to rezone a 30.65± acre parcel from Agricultural (AG-2) to Mixed Use Planned Development (MPD) in reference to Alico Oriole West MPD; and

WHEREAS, a public hearing before the Lee County Zoning Hearing Examiner, Amanda L. Rivera, was advertised and held on September 27, 2023. At the conclusion of the hearing, the Hearing Examiner left the record open and requested Staff and the Applicant to submit written submissions to her Office on or before October 2, 2023; and

WHEREAS, the Hearing Examiner gave full consideration to the evidence in the record for Case #DCI2022-00061 and recommended APPROVAL of the Request; and

WHEREAS, a second public hearing was advertised and held on December 6, 2023 before the Lee County Board of Commissioners; and,

WHEREAS, the Lee County Board of Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to rezone a 30.65± acre parcel from AG-2 to MPD, to allow 350,000 square feet of commercial retail, office, industrial uses, and 150 hotel rooms.

The property is located in the Industrial Development Future Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

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 C).
 - 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
 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

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, 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:
 - 1) Date agricultural uses ceased.
 - 2) Legal description of the property subject to development order approval for vertical development.

- 3) 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 D). 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 E).
- 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 LDC § 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 LDC § 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.

SECTION C. DEVIATIONS

2A. Withdrawn

2B. Setbacks for Water Retention or Detention Excavations

Deviation (2B) seeks relief from the 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. This deviation is APPROVED.

2C. Relief from Bank Slopes

Deviation (2C) seeks relief from the 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. This deviation is APPROVED SUBJECT TO the condition that 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.

2D. Fencing

Deviation (2D) seeks relief from the 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. This deviation is APPROVED.

3A. Open Space

Deviation (3A) seeks relief from the 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. This deviation is APPROVED SUBJECT TO the condition that development order plans must demonstrate substantial compliance with the open space chart and MCP prior to development order approval.

3B. Withdrawn

3C. Littoral Shelf (Proposed Lakes Only)

Deviation (3C) seeks relief from the LDC §§ 10-418(2)(a) and 10-418(2)(d)3, which require surface water management systems to provide a planted littoral shelf that mimics the function of a natural marsh, to allow 4:1 littoral shelf. Deviation (3C) also seeks relief from the LDC § 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. This deviation is 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.

4A. Street Trees

Deviation (4A) seeks relief from the 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. This deviation is APPROVED SUBJECT TO the condition that 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.

4B. Culs-de-Sac

Deviation (4B) seeks relief from the 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. This deviation is APPROVED SUBJECT TO the conditions that the 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.

5A, 5B. Nonresidential Identification Signs

Deviations (5A) and (5B) seek relief from the LDC §§ 30-153(2)a and 30-153(2)a.1.ii which require 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 the following:

- 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.

This deviation is APPROVED.

6. Parking Lot Interconnection

Deviation (6) seeks relief from the LDC §§ 10-610(e) and 34-2015(2)(f), which require 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. This deviation is APPROVED.

7. Connection Separation

Deviation (7) seeks relief from the 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. This deviation is APPROVED.

SECTION D. EXHIBITS

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: Legal description of the property
- Exhibit B: Zoning Map (with the subject parcel indicated)
- Exhibit C: The Master Concept Plan
- Exhibit D: Bald Eagle Management Plan dated 05/11/2023
- Exhibit E: Open Space Chart

SECTION E. FINDINGS AND CONCLUSIONS

Based upon its review, the Board of County Commissioners adopts the recommendation of the Hearing Examiner, including the following findings and conclusions:

1. As conditioned herein, the proposed MPD:
 - a. 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.

- b. Complies with the LDC and other County regulations or qualifies for deviations. See, LDC Chapters 10 and 34.
 - c. 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).
 - d. 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.
 - e. 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).
 - f. 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).
- 2. The MCP 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).
 - 3. 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.
 - 4. 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.
 - 5. As conditioned herein, the deviations:
 - a. Enhance the objectives of the planned development; and
 - b. Promote the intent of the LDC to protect public health, safety, and welfare. See, § 34-377(b)(4).

SECTION F. SCRIVENER'S ERRORS

The Board intends that this resolution can be renumbered or relettered and typographical errors that do not affect the intent and are consistent with the Board's action can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

Commissioner Pendergrass made a motion to adopt the foregoing resolution, seconded by Commissioner Hamman. The vote was as follows:

Adopted by unanimous consent.

Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Mike Greenwell	Aye

DULY PASSED AND ADOPTED this 6th day of December 2023.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

BY: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Mike Greenwell, Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY


Michael D. Jacob
Deputy County Attorney
County Attorney's Office

RECEIVED
MINUTES OFFICE
MB
2023 DEC 13 AM 10:38

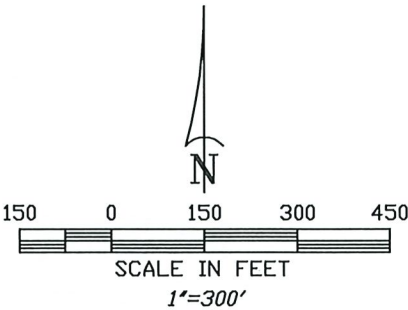
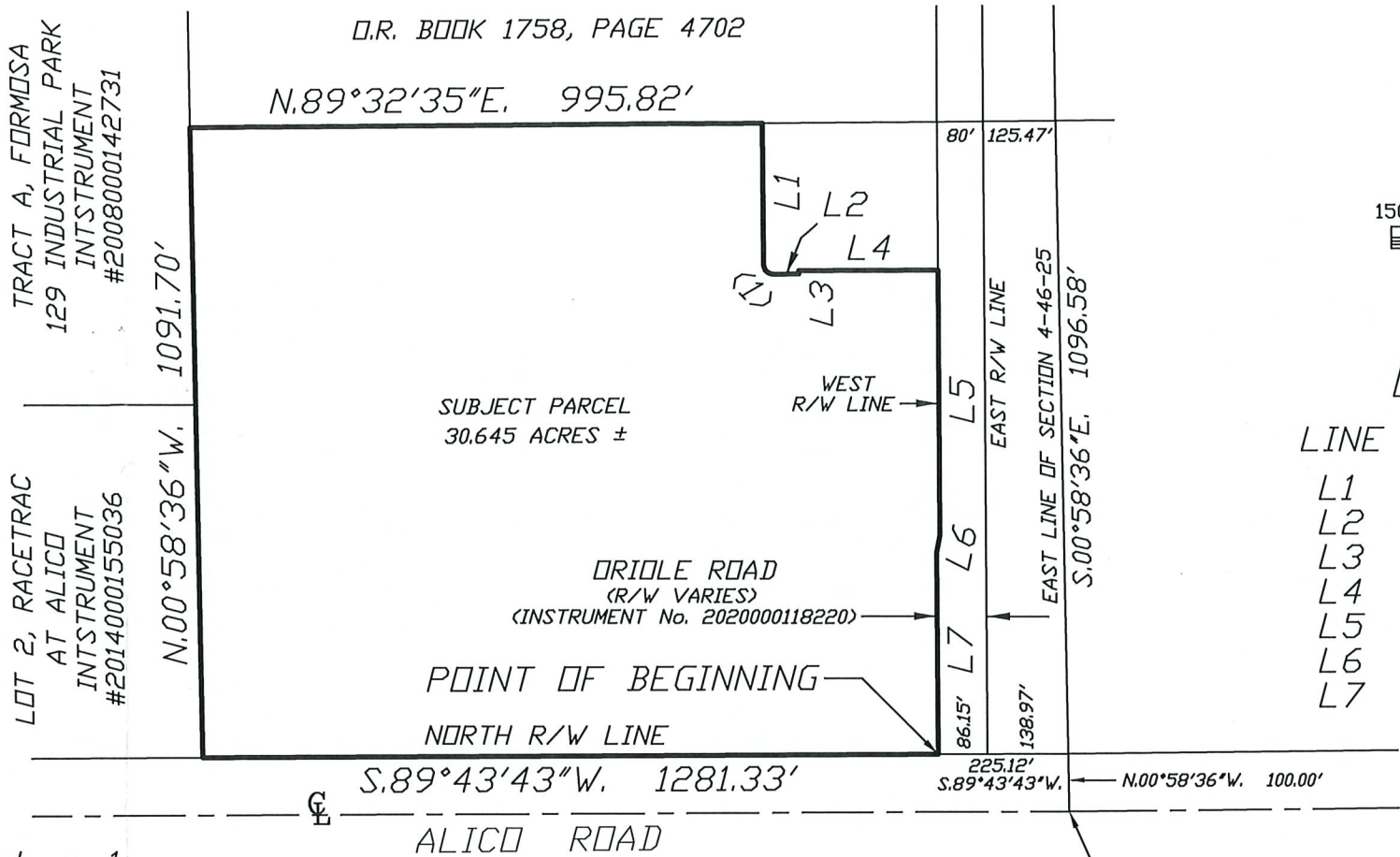
EXHIBIT A

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.

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
Phillip M Mould, P.S.M.
P.S.M. 6515 6515 State of Florida
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

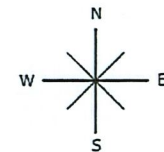
NOTE: THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006, FS 668.50, FS 472.025, 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.



DCI2022-00061

Zoning

 Subject Property



0 300 600 900 1,200
Feet



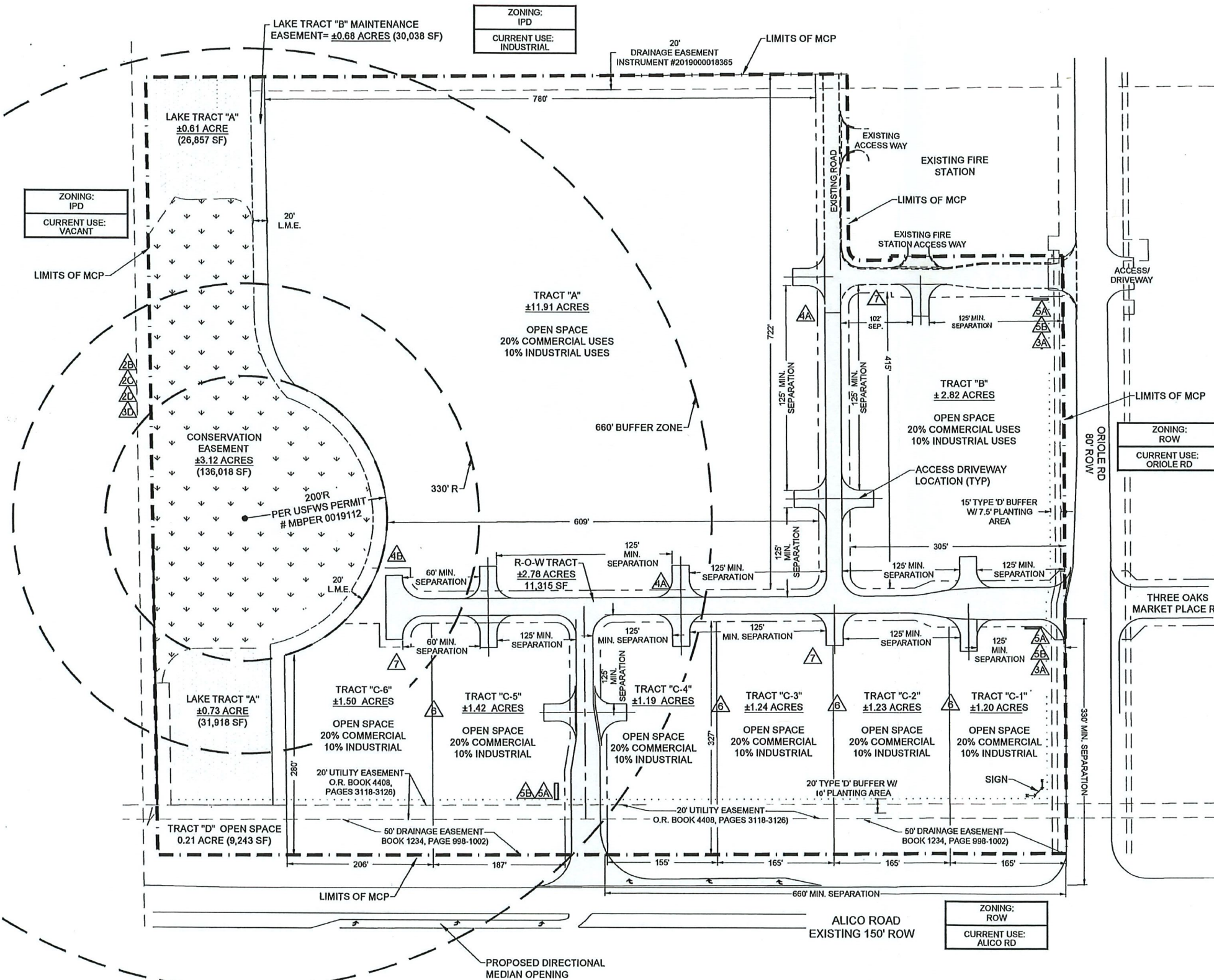
ALICO ORIOLE WEST

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

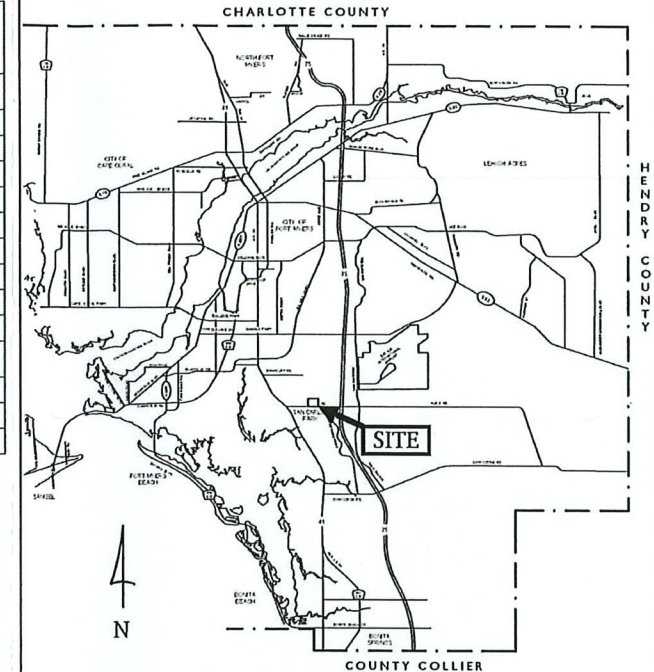
LEE COUNTY
HEARING EXAMINER

2023 SEP 28 PM 1:55

MASTER CONCEPT PLAN



ALICO ORIOLE WEST MCP AREAS	
DESCRIPTION	ACREAGE
TRACT A	11.91
TRACT B	2.82
TRACT C-1	1.20
TRACT C-2	1.23
TRACT C-3	1.24
TRACT C-4	1.19
TRACT C-5	1.42
TRACT C-6	1.50
ROWTRACT	2.78
CONSERVATION EASEMENT & LAKE TRACT	4.46
LAKE MAINTENANCE EASEMENT	0.68
TRACT D OPEN SPACE	0.21
TOTAL ACREAGE	30.64



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

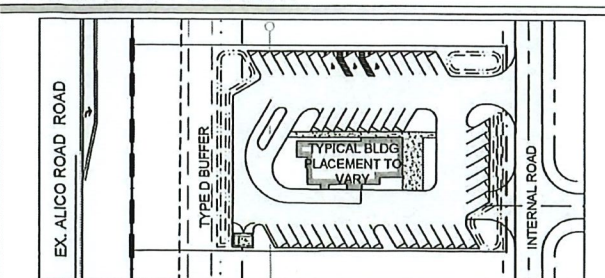
OPEN SPACE
COMMERCIAL USES: 20%
INDUSTRIAL USES: 10%

CONSERVATION AN LAKE AREA
4.46 ACRES

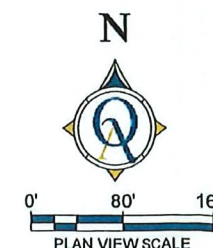
DEVIATIONS



TYPICAL LOT LAYOUT:



Approved as Exhibit C
MCP Page 1 of 1
Resolution # 2-28-033



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

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

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Attachments

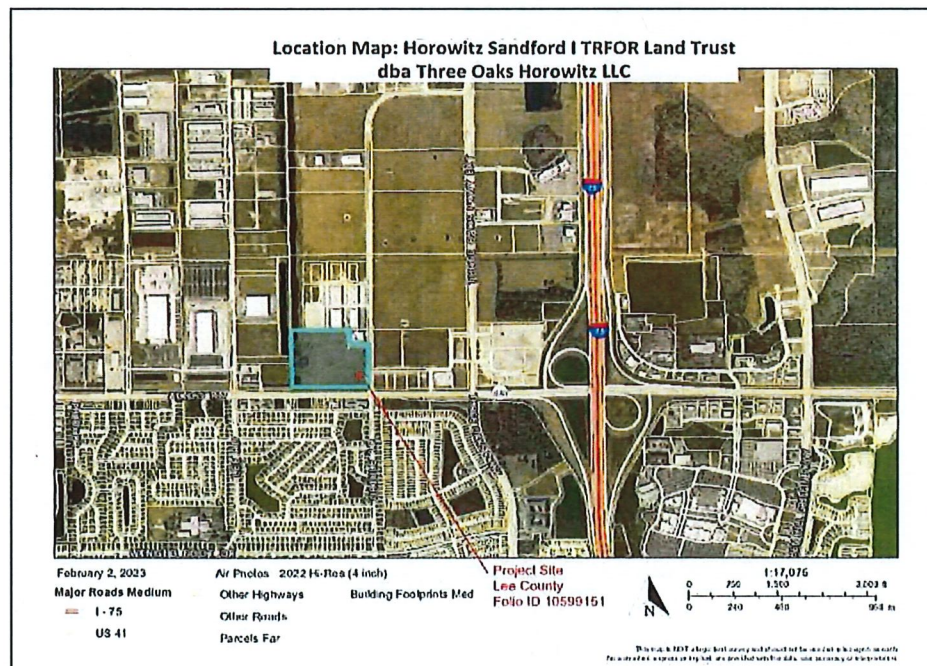
1	Eagle Buffer Planting Exhibit
2	Short-Term Eagle Incidental Take Permit No. MBPER0019112
3	LE093 Nesting History
4	Alternate Eagle Nest/Perch Trees Exhibit
5	Eagle Flight Pattern Exhibits
6	MCP

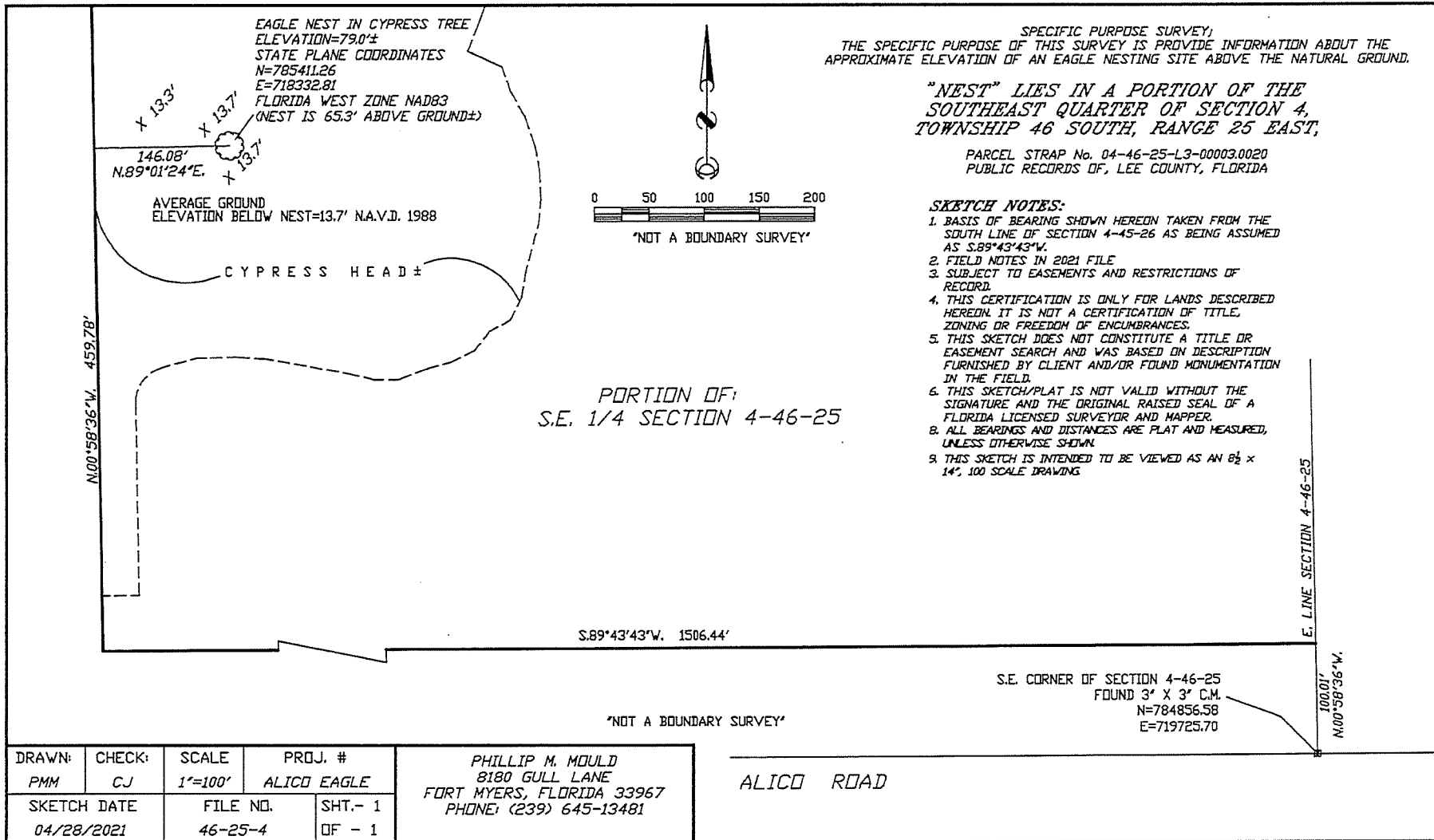
Background and Introduction

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*).

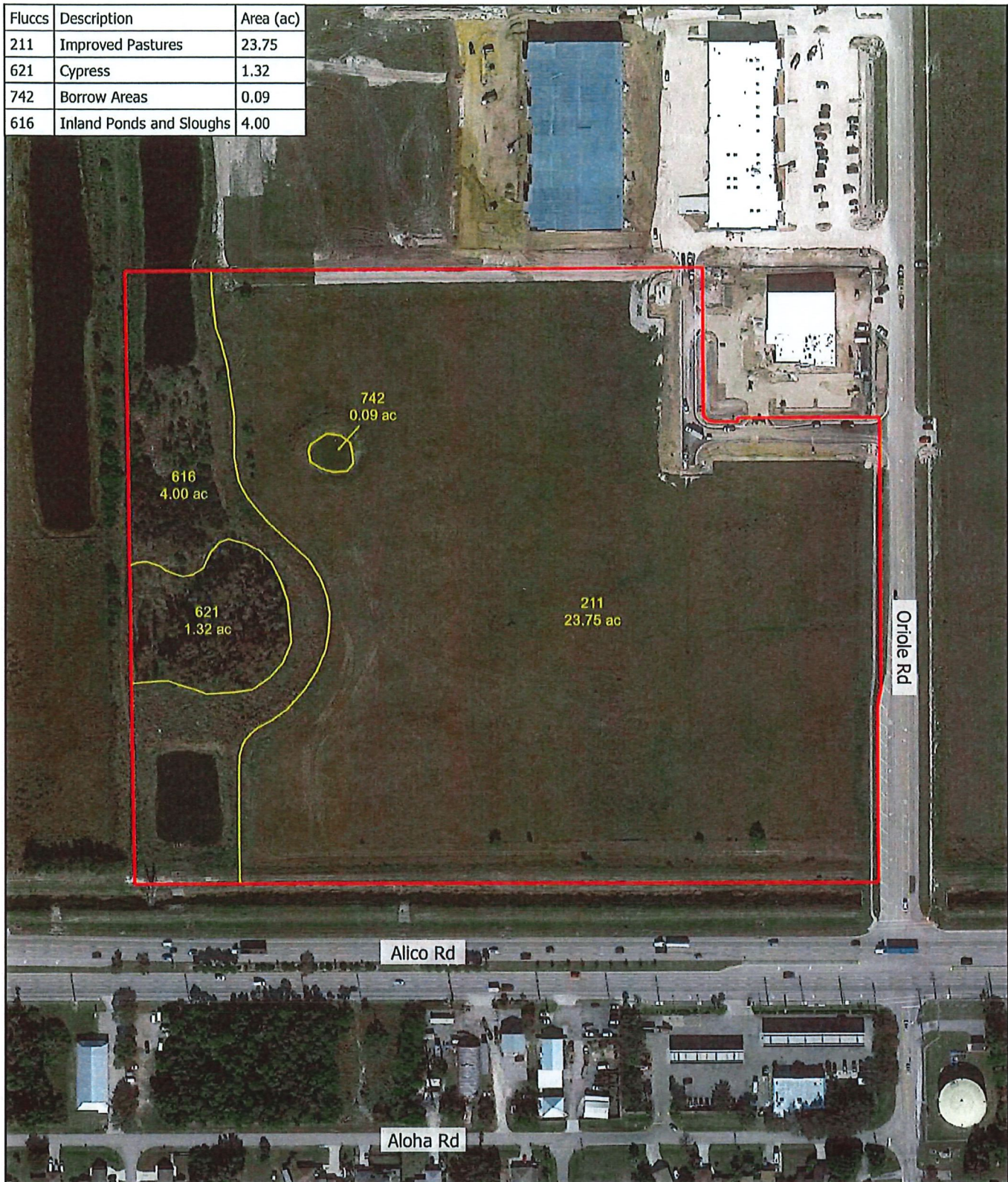
FLUCCS 616 - Inland Ponds and Sloughs

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

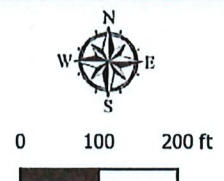
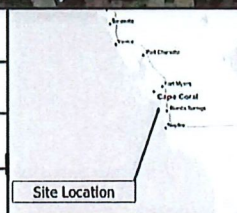
This community occurs as isolated heads in the central portion of the western conservation area site. (The Eagle nest is located in this area)

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



SYNECOLOGICAL
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 ENVIRONMENTAL EVALUATION AND ADVOCACY
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 NAPLES, FLORIDA 34119
 PHONE: (239) 514-3098
 www.synecol.com

PROJECT: West Oriole Marketplace - Flucss Map
 DATE: March 29, 2022
 DRAWN BY: NW



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.

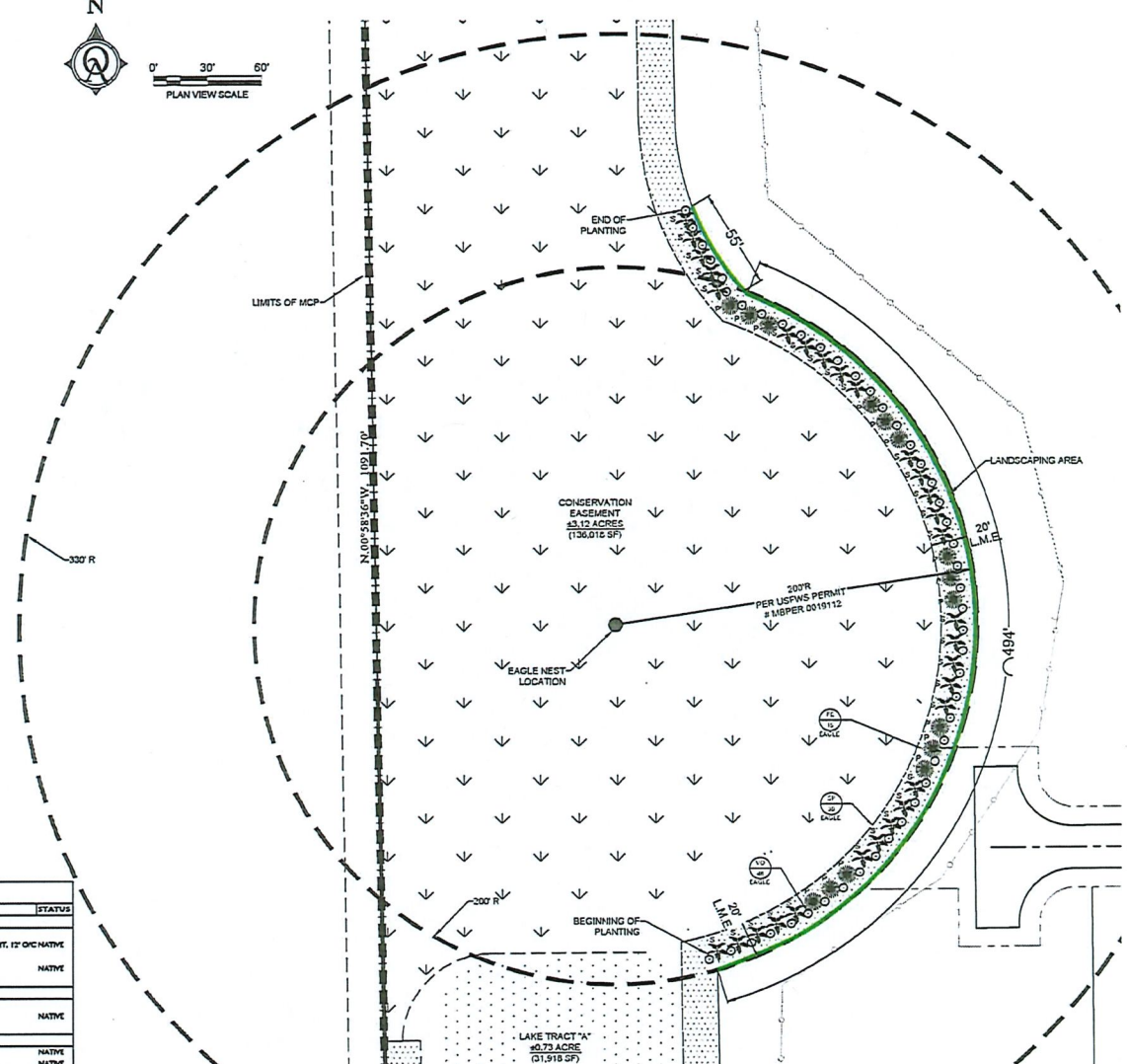
Monitoring will be conducted at a distance that allows for observation without an interruption in the eagle's normal breeding behavior. If the eagles do not return to the known nest location (LE093), the site will be monitored to assess whether or not the eagles nest, roost, and/or forage at a new location.

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



LIST OF PLANT AND SPECIFICATIONS						
SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SPECIFICATION	STATUS	
BUFFER TREES						
SP	20	SABAL PALMS	SABAL PALMETTO	18' HT. CLEAR TRUNK 12IN. 18' INK HT. 12" OC NATIVE		
PE	15	SLASH PINE, SOUTH FLORIDA	PINUS ELLIOTTI + <i>densa</i>	8' 1" HT. 2" CAL. #3 12" OC		
SHRUBS - LANDSCAPING						
VO	46	WALTERS YBURNIUM	YBURNIUM OBOVATUM	2" HT. #2 CONTAINER 12" D.C.		NATIVE
SOG						
HSC		BAHA SOG	PASPALUM NOTATUM	2" SOG		NATIVE
MECH		PIKE STRAW MECH		2" GROUND THROUGHOUT		NATIVE

**ALICO ORIOLE WEST
EAGLE BUFFER PLANTING EXHIBIT
FORT MYERS
LEE COUNTY, FLORIDA**

Qualtrone & Associates, Inc.
Engineers, Planners, & Development Consultants
4301 Veronica Skeneaster Blvd. • Fort Myers, Florida 33916 • 239-936-3222
Contract of Association Number 4435

SAVED BY: Gabriela
SAVED ON: 6/27/23

SHEET
LS-01
01 OF 01



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



SHORT-TERM EAGLE INCIDENTAL TAKE

Permit Number: MBPER0019112

Version Number: 0

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

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.



SHORT-TERM EAGLE INCIDENTAL TAKE

Permit Number: MBPER0019112

Version Number: 0

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

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.



SHORT-TERM EAGLE INCIDENTAL TAKE

Permit Number: MBPER0019112

Version Number: 0

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

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.



SHORT-TERM EAGLE INCIDENTAL TAKE

Permit Number: MBPER0019112

Version Number: 0

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

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:

- a. During each eagle nesting season, defined as October 1 through May 15, or when eagles are present at the nest and
- b. 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:



SHORT-TERM EAGLE INCIDENTAL TAKE

Permit Number: MBPER0019112

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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.



SHORT-TERM EAGLE INCIDENTAL TAKE

Permit Number: MBPER0019112

Version Number: 0

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

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

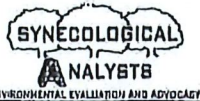
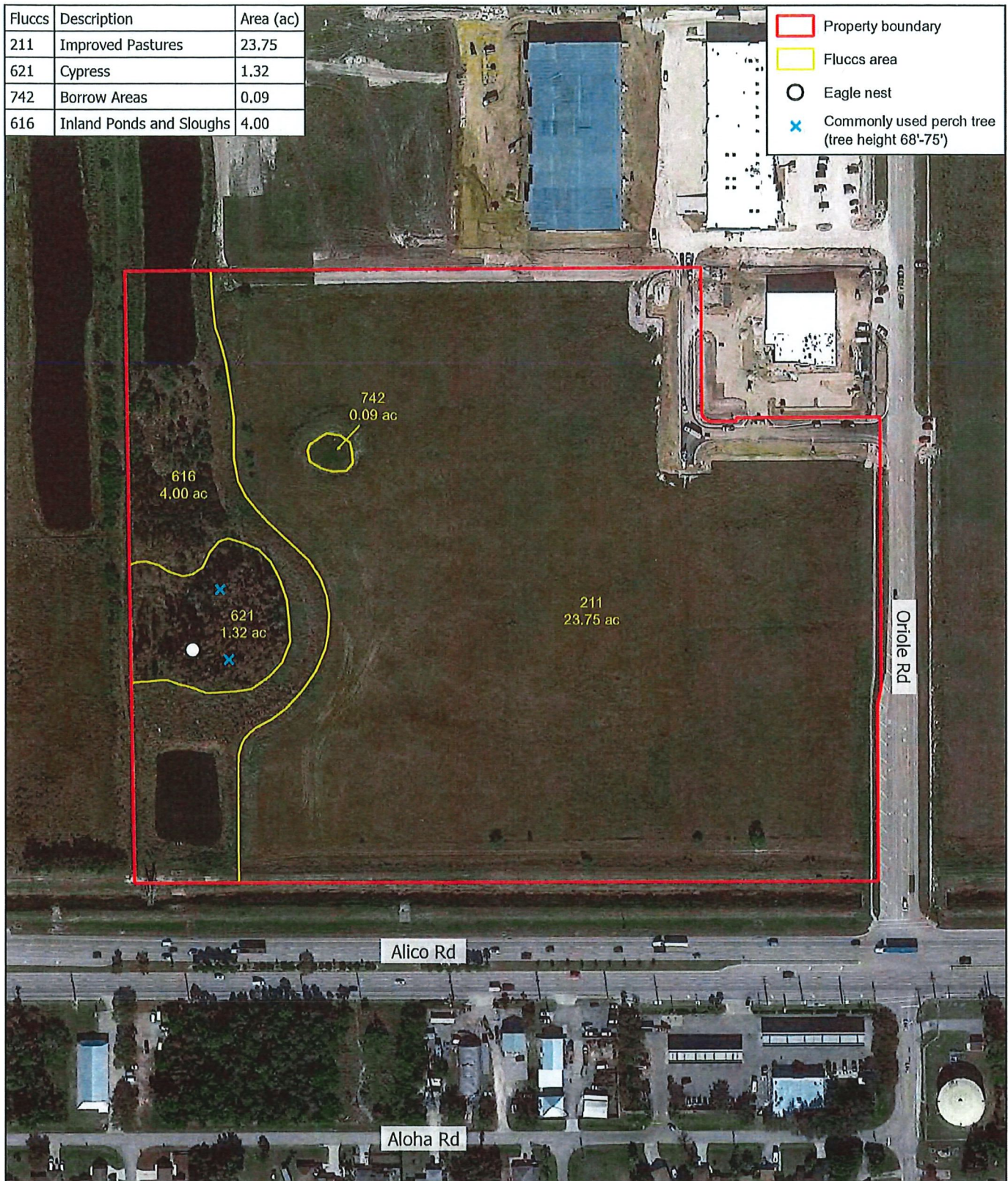
Strap Number: 04-46-25-00-00003.0020

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

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



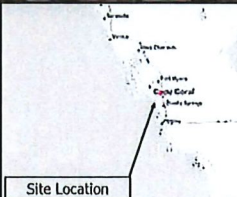
ENVIRONMENTAL EVALUATION AND ADVOCACY

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

PROJECT: West Oriole Marketplace - Flucss Map

DATE: Feb 27, 2023

DRAWN BY: NW

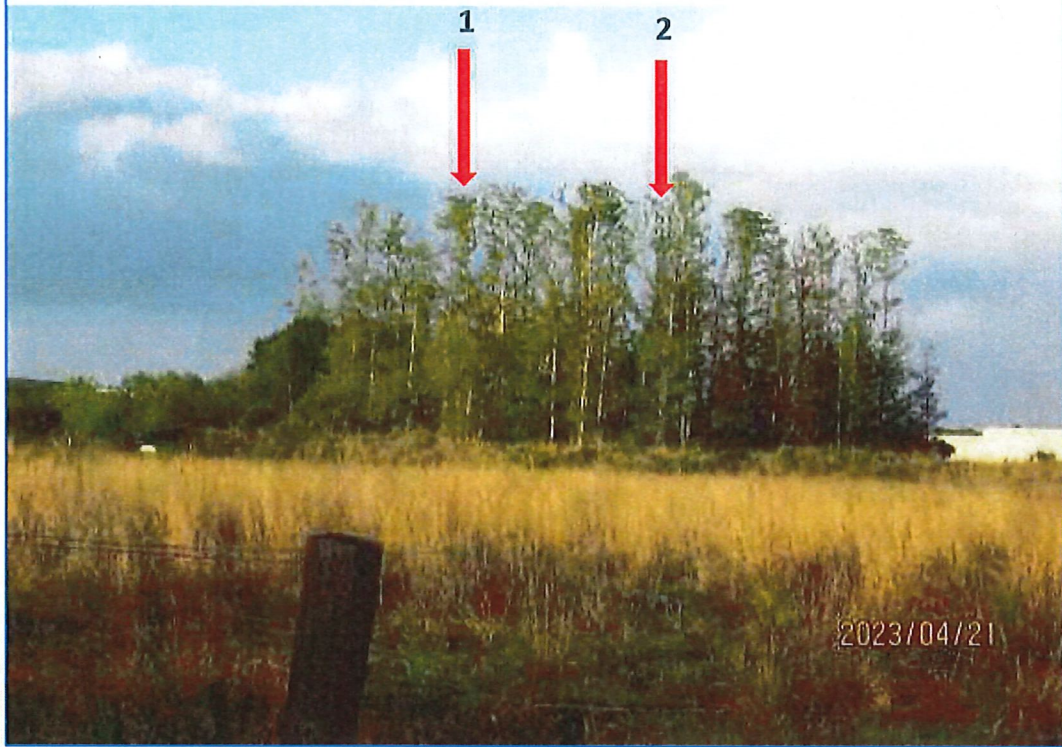


0 100 200 ft



Alternate Eagle Nest / Perch trees

The arrows indicate the perch trees



Tree 1: Height

Tree 2: Height



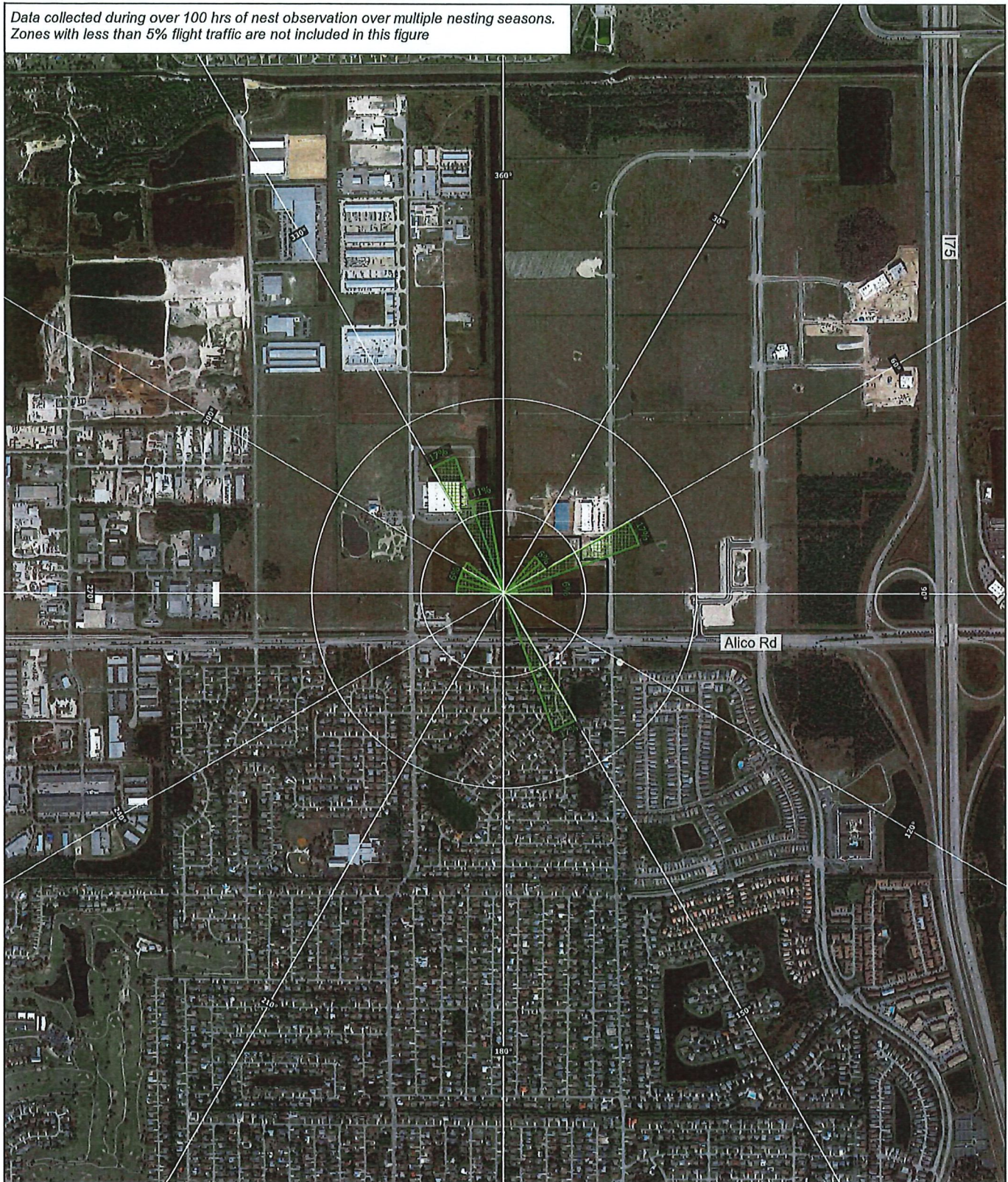
Tree 1

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



ENVIRONMENTAL EVALUATION AND ADVOCACY

2159 Morning Sun Lane
NAPLES, FLORIDA 34119
PHONE: (239) 614-3998
www.synecol.com

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

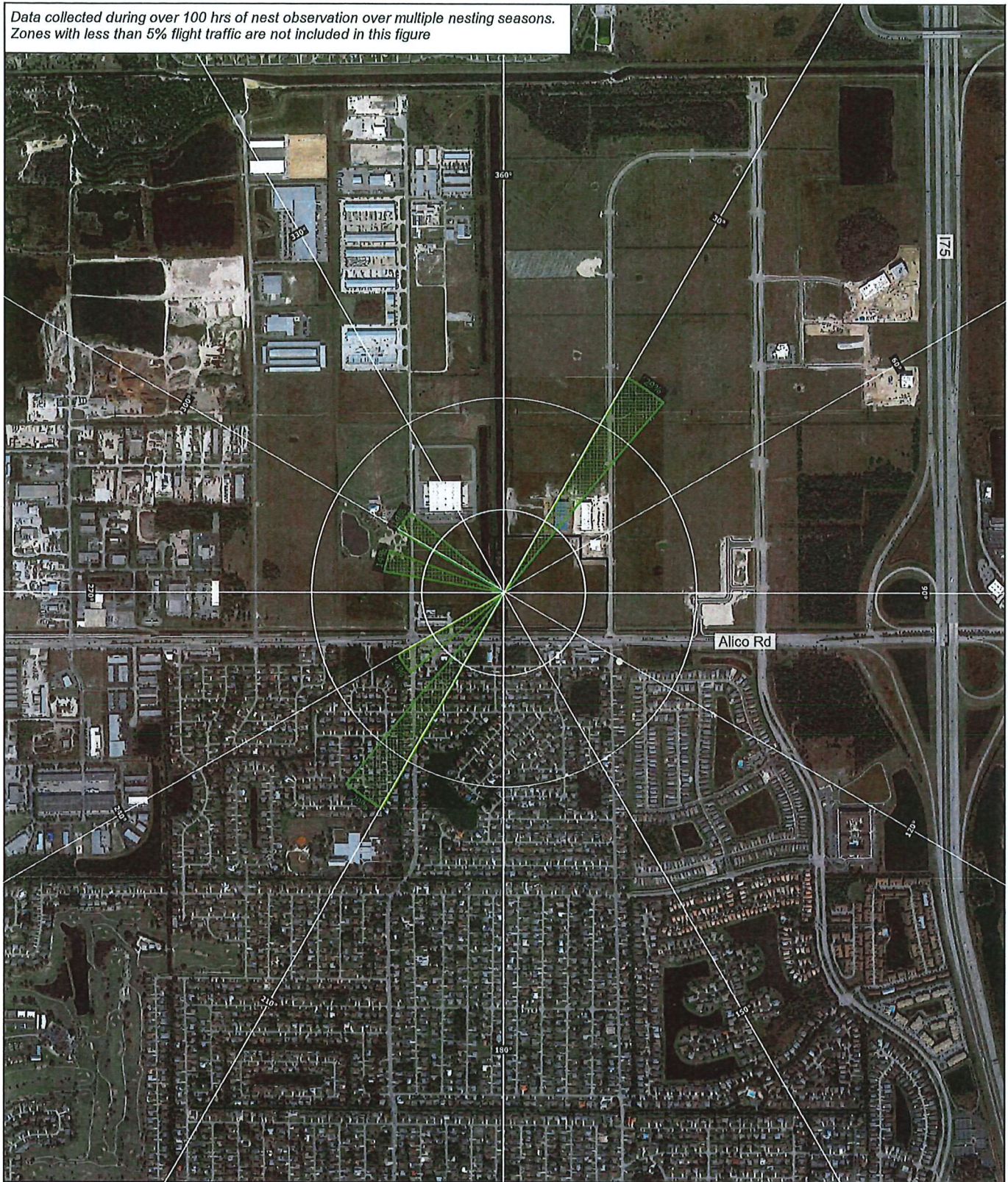
DATE: May 9, 2023

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

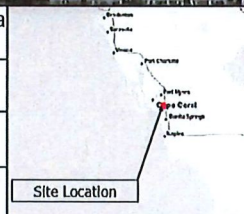


ENVIRONMENTAL EVALUATION AND ADVOCACY
2159 Morning Sun Lane
NAPLES, FLORIDA 34119
PHONE: (239) 514-3998
www.synecol.com

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

DATE: May 9, 2023

DRAWN BY: NW



0 400 800 1,200 ft



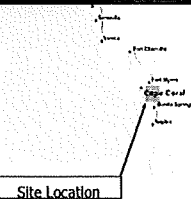
ENVIRONMENTAL EVALUATION AND ADVOCACY

2169 Morning Sun Lane
NAPLES, FLORIDA 34119
PHONE: (239) 514-3998
www.synecol.com

PROJECT: LE 093 Nest Foraging Area Figure

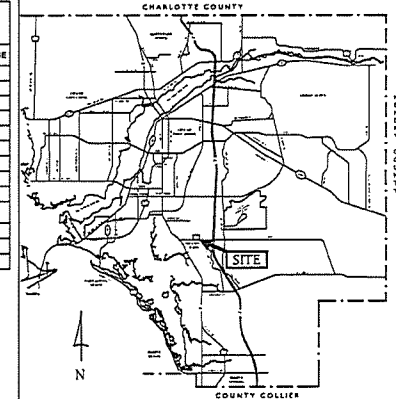
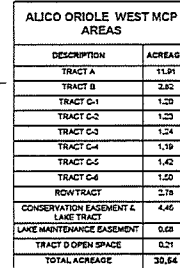
DATE: May 9, 2023

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

PROJECT SUMMARY:

<u>ZONING</u> AG-2 to MPD	<u>STRAP #'s</u> 04-46-25-L3-00003-0020
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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

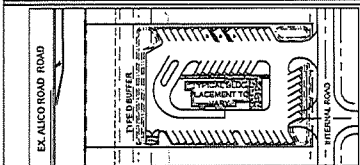
OPEN SPACE

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 Shumaker Blvd. | Fort Myers, FL 33916 | 239.936.5222 | Q&Ainc.net

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 E