



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT  
701 SAN MARCO BOULEVARD  
JACKSONVILLE, FLORIDA 32207-8175

**December 18, 2024**

Regulatory Division  
South Branch  
Florida Keys Permits Section

## ***PUBLIC NOTICE***

Permit Application No. SAJ-2024-03463 (SP-WMF)

TO WHOM IT MAY CONCERN: The Jacksonville District of the U.S. Army Corps of Engineers (Corps) has received an application for a Department of the Army permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344) as described below:

If you are interested in receiving additional project drawings associated with this public notice, please send an e-mail to the project manager by electronic mail at PM.[William.m.fox@usace.army.mil](mailto:William.m.fox@usace.army.mil)

APPLICANT: Timothy Oak, Neal Communities  
28100 Bonita Grande Drive, Suite 106  
Bonita Springs, Florida 34135

WATERWAY AND LOCATION: The project would affect Corps jurisdictional wetlands and waters of the United States associated with the Caloosahatchee River. The 788.98± acre project site is located on the south side of North River Road, approximately one mile east of State Road (SR) 31, in Sections 16 and 17, Township 43 South, Range 26 East, Lee County, Florida.

Directions to the site are as follows: From Interstate 75, take State Road 80 east for approximately 2.6 miles. Turn left on State Road 31 and continue north for approximately 2.7 miles. Turn right on North River Road and continue east for approximately 1.3 miles. The gate to the northwestern parcel of the Project is located on the south side of North River Road.

APPROXIMATE CENTRAL COORDINATES: Latitude 26.7296°  
Longitude -81.7305°

### PROJECT PURPOSE:

Basic: Construct a residential development.

Overall: Construct an economically viable residential development in northern Lee County that will meet local residential development needs and provide for large-scale indigenous vegetation restoration opportunities.

**EXISTING CONDITIONS:** The majority of the project site is currently used for cattle grazing operations, while the remainder of the site contains scattered native wetland and upland habitat types within varying levels of disturbance and exotic vegetation including, but not limited to, Brazilian pepper (*Schinus terebinthifolia*), melaleuca (*Melaleuca quinquenervia*), and torpedograss (*Panicum repens*).

A total of 42 vegetative and land cover types (i.e., Florida Land Use Cover and Forms Classification System (FLUCFCS) codes) were identified within the project site. The dominant land uses on the property are improved pasture which occupies 574.78± acres or approximately 73 percent of the site. Ditches, berms, a cow pond, roads, spoil areas, and disturbed land associated with the agricultural uses occupy 19.48± acres or approximately 2.5 percent of the site. The on-site wetland habitats have been disturbed by ditching, cattle grazing activities, and exotic infestation.

The project site contains 79.90± acres of wetlands which constitutes approximately 10.1 percent of the project. The prominent wetland features are Low Pasture, Hydric; Freshwater Marsh; Wetland Forested Mixed, Disturbed; Cypress, Disturbed; Wetland Shrub, Disturbed, Ditch, Hydric, Cabbage Palm, Disturbed, Hydric, with varying degrees of exotic infestation. In addition, the site contains 18.20± acres of waters which constitutes approximately 2.3 percent of the project. The Waters features include Ditch, Cow Pond, and Streams and Waterways.

Historically, the Project contained two tributaries of the Caloosahatchee River: Trout Creek, which is an extant stream system that bisects the western portion of the property, and Otter Creek, which is a historic feature located in the northeastern portion of the site that has been channelized by past agricultural activities and no longer functions as a natural stream system.

The Project site is bordered to the north by North River Road and is surrounded by agricultural lands, undeveloped forested lands, and single-family homes.

**PROPOSED WORK:** The applicant seeks authorization to construct a residential development with associated infrastructure, amenities, and surface water management system, and preserve, enhance, and restore 417.54± acres of indigenous vegetation communities. The proposed project will require the discharge of dredged or fill material in 15.47± acres of wetlands and 3.55± acres of waters. Additionally, the Project will require dredging or excavation in 6.28± acres of wetlands and 1.65± acres of Waters. The project's conservation area totals 417.54± acres and includes 57.82± acres, or approximately 72 percent, of the project's existing wetlands and 359.72± acres of existing uplands and Waters preserve. Of the total conservation area, only the wetlands are proposed for mitigation.

**AVOIDANCE AND MINIMIZATION INFORMATION** – The applicant has provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

The proposed project will result in 21.75± acres of wetland impacts, the majority of which have been historically disturbed by agricultural operations, ditching, and exotic vegetation infestation. The project's site plan has been designed to avoid and minimize wetland impacts to the extent practicable by concentrating the majority of the proposed development within the existing cattle pastures.

The proposed project will result in 5.20± acres of Waters impacts. The Waters proposed for impact consist of man-made and channelized natural features associated with past and present agricultural operations and include Ditch, Cow Pond, and Streams and Waterway. Impacts to the man-made Waters are necessary to avoid and minimize wetland impacts throughout the project site.

COMPENSATORY MITIGATION – The applicant has offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment:

The applicant proposes both on-site and off-site mitigation to offset functional loss associated with the proposed wetland impacts. The on-site mitigation includes the preservation and enhancement of 57.82± acres of existing wetlands. In addition the applicant proposes the purchase of 1.55 credit from a wetland mitigation bank that services the project area.

#### CULTURAL RESOURCES:

By e-mail dated September 26, 2023, the Florida Department of State Division of Historical Resources (DHR) provided comments to the South Florida Water Management District (SFWMD) in response to the Project's SFWMD Environmental Resource Permit (ERP) application (No. 230819-39967). Per the e-mail, it is the opinion of the DHR that the Project is unlikely to affect historic properties. However, the DHR requested that the following condition be incorporated into the Project's SFWMD ERP:

#### ENDANGERED SPECIES:

The Corps will request U.S. Fish and Wildlife concurrence with the following determinations pursuant to Section 7 of the Endangered Species Act:

Wood Stork: The Corps has made the determination of *may affect, but is not likely to adversely affect (MANLAA)* the wood stork (*Mycteria americana*). The Corps has concurrence with this determination pursuant to *U.S. Fish and Wildlife Service's May 18, 2010, South Florida Programmatic Concurrence Letter (Wood Stork Key)*. Use of the Wood Stork Key resulted in the following sequential determination: A-B-C-E-NLAA. Although the project will directly impact potential wood stork foraging habitat, replacement compensation is proposed in accordance with Clean Water Act 404(b)(1) guidelines; the habitat compensation replaces foraging value consisting of wetland enhancement and restoration matching the hydroperiod of wetlands affected; and

replacement compensation provides foraging value similar to, or higher than, that of impacted wetlands; therefore, Corps determined the project “may affect, but is not likely to adversely affect” (NLAA), the wood stork and will request concurrence from the U.S. Fish and Wildlife Service via a separate letter.

Florida Bonneted Bat: Florida bonneted bats (*Eumops floridanus*) have been documented on-site during an acoustic survey conducted by the applicant. The U.S. Fish and Wildlife Service’s October 2019 Florida Bonneted Bat Effect Determination Key was used to conduct a sequential effect determination. Use of the key resulted in the following determination for the Florida bonneted bat: 1a > 2a > 3b > 6b > 7b > 8b “Likely to Adversely Affect (LAA).” The Corps will request formal consultation on this species from the U.S. Fish and Wildlife Service via a separate letter.

Eastern Indigo Snake: The Corps has made the determination of *may affect* for the Eastern indigo snake (*Drymarchon corais couperi*). Based on the Eastern Indigo Snake Effect Determination Key (dated August 1, 2017), the Corps determination sequence resulted in A > B > C “may affect”. The Corps determined the proposed project “may affect” the eastern indigo snake and will request formal consultation on this species from the U.S. Fish and Wildlife Service via a separate letter.

Red-Cockaded Woodpecker: The project site is located within the U.S. Fish and Wildlife Service’s red-cockaded woodpecker (RCW) (*Picoides borealis*) consultation area. According to the Florida Fish and Wildlife Conservation Commission database of documented occurrences of listed species, there are no documented red-cockaded woodpecker colonies within the project’s vicinity. No RCWs or cavities in live pine trees have been documented on-site during protected species surveys and other field work conducted on the project site by the applicant. Additionally, high levels of exotic vegetation and dense native vegetation in the understory generally preclude much of the existing habitat from supporting RCWs. Suitable RCW habitat on the project site such as pine and hydric pine with low exotic levels will be preserved and enhanced. The Corps’ preliminary determination is that the proposal will have “no effect” on the RCW and will request concurrence from the U.S. Fish and Wildlife Service via a separate letter.

Everglades Snail Kite: One Everglade snail kite (*Rostrhamus sociabilis plumbeus*) has been documented on-site during a protected species survey conducted by the applicant. Critical habitat has been designated for the Everglade snail kite. The project is not located adjacent to or within the designated critical habitat and will have no impact on designated critical habitat for the Everglade snail kite. Additionally, the project does not lie within the species’ consultation area. The project will provide a net gain of potential snail kite foraging and nesting habitat by enhancing and restoring existing wetlands through exotic vegetation removal and installation of supplemental plantings. The Corps’ preliminary determination is that the proposal will have “no effect” on the Everglades snail kite and will request concurrence from the U.S. Fish and Wildlife Service via a separate letter.

Crested Caracara: Crested caracara (*Polyborus plancus audubonii*) have been documented on-site during a protected species survey and during a 2024 nesting season survey conducted by the applicant. A dilapidated crested caracara nest was documented by the applicant in the northwestern portion of the project during the 2021-2022 nesting season. The nest has since fallen into disrepair. No crested caracara were observed nesting on the project site during the 2024 nesting season survey conducted by the applicant. Given the documented crested caracara use on the project, the proposed federal action is Likely to Adversely Affect (LAA) the crested caracara. The Corps will request formal consultation on this species from the U.S. Fish and Wildlife Service via a separate letter.

Florida Scrub Jay: The Project occurs within the US Fish and Wildlife Service Consultation Area for the Florida scrub jay (*Aphelocoma coerulescens*). The Florida scrub jay lives only in scrub and scrubby flatwoods habitats found on nearly pure, excessively well-drained, sandy soils. The project site does not contain suitable Florida scrub jay habitat. Surveys conducted by the applicant found no use of the project site by Florida scrub jay. The Corps' preliminary determination is that the proposal will have "no effect" on the scrub jay and will request concurrence from the U.S. Fish and Wildlife Service via a separate letter.

NAVIGATION: The proposed work is not located in the vicinity of a federal navigation channel.

SECTION 408: The applicant will not require permission under Section 14 of the Rivers and Harbors Act (33 USC 408) because the activity, in whole or in part, would not alter, occupy, or use a Corps Civil Works project.

NOTE: This public notice is being issued based on information furnished by the applicant. This information has not been verified or evaluated to ensure compliance with laws and regulation governing the regulatory program. The jurisdictional line has not been verified by Corps personnel.

COMMENTS regarding the potential authorization of the work proposed should be submitted in writing to the attention of the District Engineer through the Florida Keys Permits Section, 9900 SW 107th Avenue, Suite 203, Miami, Florida, 33176 within 30 days from the date of this notice.

The decision whether to issue or deny this permit application will be based on the information received from this public notice and the evaluation of the probable impact to the associated wetlands. This is based on an analysis of the applicant's avoidance and minimization efforts for the project, as well as the compensatory mitigation proposed.

QUESTIONS concerning this application should be directed to the project manager, William Fox, in writing at the Keys Permits Section, 9900 SW 107th Avenue, Suite 203 Miami, FL 33176; by electronic mail at William.M.Fox@usace.army.mil; or, by telephone at (786)501-3014.

**IMPACT ON NATURAL RESOURCES:** Coordination with U.S. Fish and Wildlife Service, Environmental Protection Agency (EPA), the National Marine Fisheries Services, and other Federal, State, and local agencies, environmental groups, and concerned citizens generally yields pertinent environmental information that is instrumental in determining the impact the proposed action will have on the natural resources of the area.

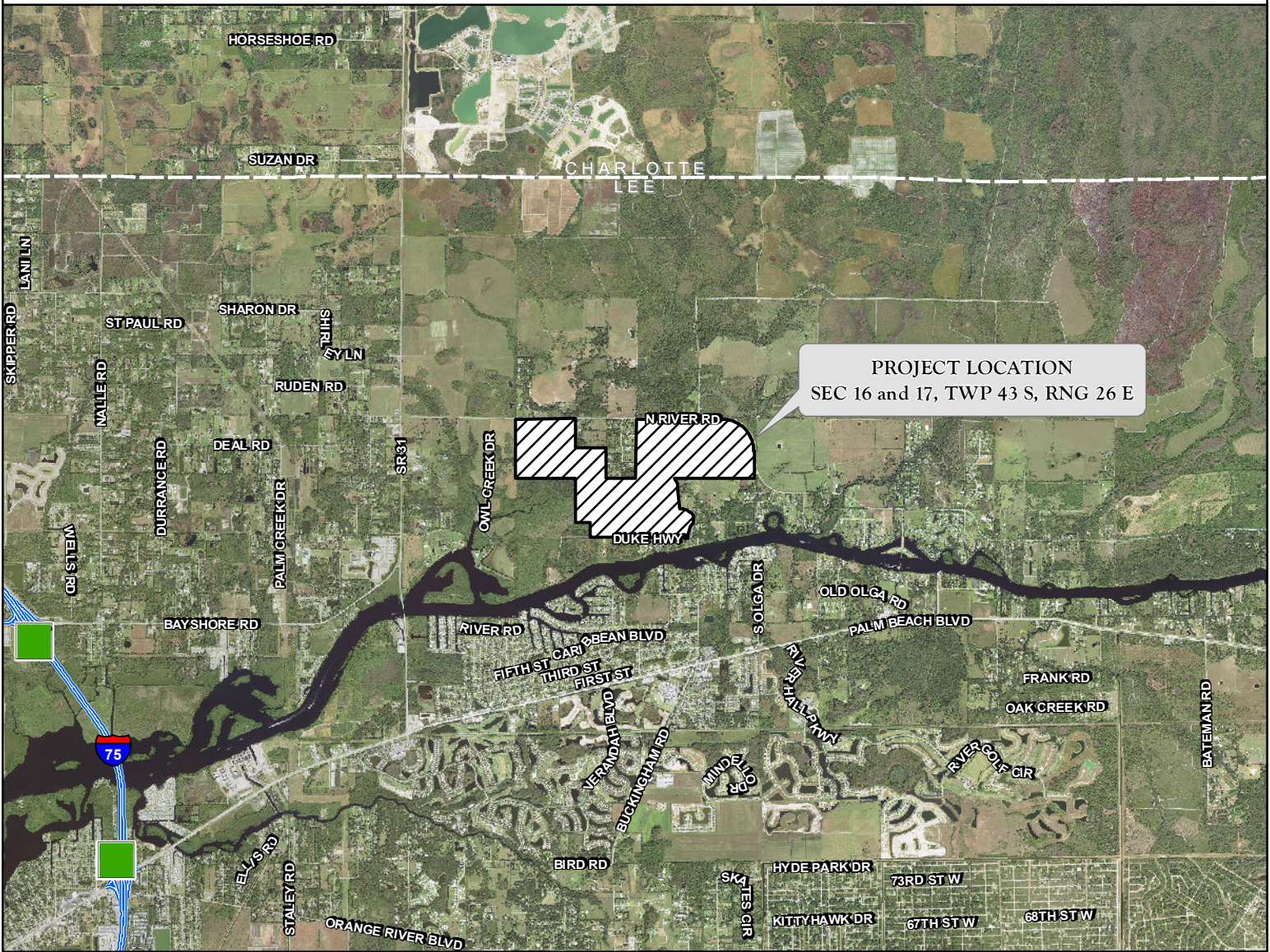
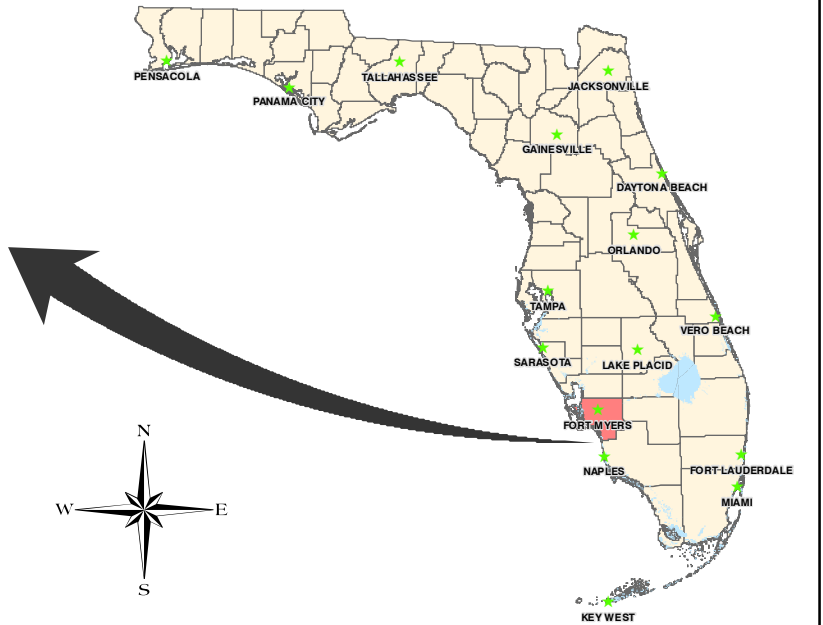
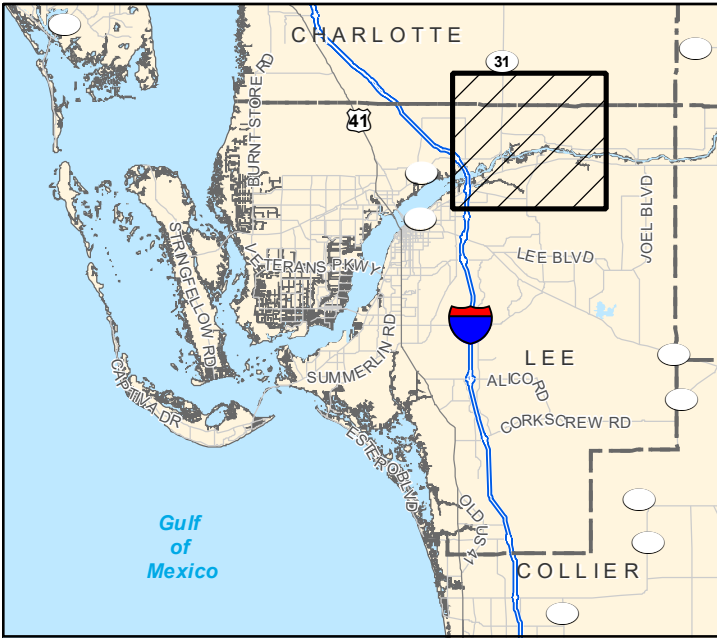
**EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including cumulative impacts thereof; among these are conservation, economics, esthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food, and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people. Evaluation of the impact of the activity on the public interest will also include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act or the criteria established under authority of Section 102(a) of the Marine Protection Research and Sanctuaries Act of 1972. The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on navigation and national security.

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other Interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this determination, comments are used to assess impacts to endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**WATER QUALITY CERTIFICATION:** WQC is required from the South Florida Water Management District and is pending approval via ERP Application No. 230819-39967.

**COASTAL ZONE MANAGEMENT CONSISTENCY:** In Florida, the State approval constitutes compliance with the approved Coastal Zone Management Plan. In Puerto Rico, a Coastal Zone Management Consistency Concurrence is required from the Puerto Rico Planning Board. In the Virgin Islands, the Department of Planning and Natural Resources permit constitutes compliance with the Coastal Zone Management Plan.

REQUEST FOR PUBLIC HEARING: Any person may request a public hearing. The request must be submitted in writing to the District Engineer within the designated comment period of the notice and must state the specific reasons for requesting the public hearing.



PROJECT NAME: CARY DUKE POVIA

APPLICANT: NEAL COMMUNITIES

PROJECT LOCATION MAP

DWG. No. 22ncc3903-1

DRAWN BY: R.F.

REVISIONS:

SHEET: 1 OF 40

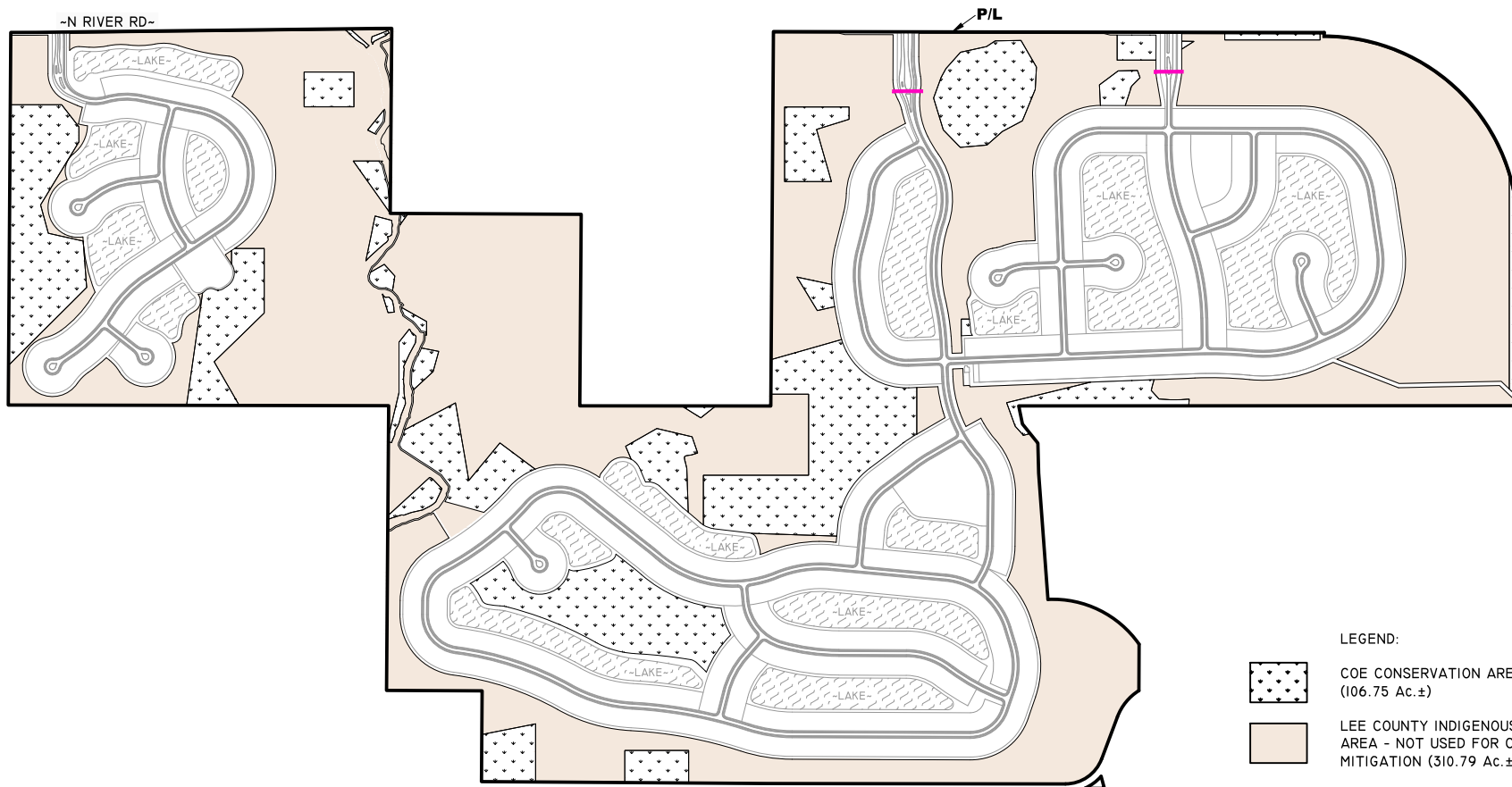
DATE: 05/01/24

SCALE: N.T.S








SCALE: 1" = 1200'



LEGEND:

-  COE CONSERVATION AREAS (106.75 Ac.±)
-  LEE COUNTY INDIGENOUS PRESERVE AREA - NOT USED FOR COE MITIGATION (310.79 Ac.±)
-  SMALL WILDLIFE CROSSING

NOTES:

PROPERTY BOUNDARY PER JR EVANS ENGINEERING, DRAWING No. 00911-00 E0508 - OA MCP.DWG DATED MARCH 22, 2024.

SITE PLAN PER JR EVANS ENGINEERING, DRAWING No. (2024-08-08) 911-00 ERP BASE.DWG DATED AUGUST 9, 2024.

PROJECT NAME: CARY DUKE POVIA

SITE PLAN

DWG. No. 22Ncc3903-2

SHEET: 2 OF 40

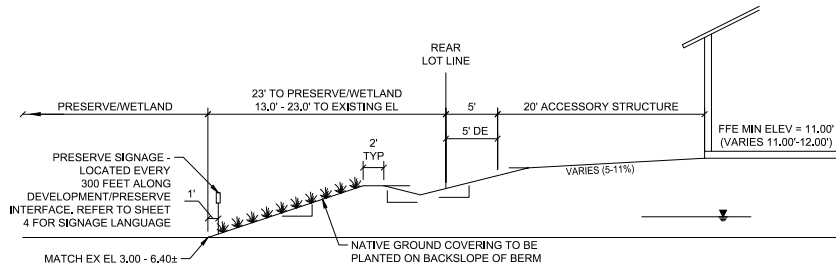
APPLICANT: NEAL COMMUNITIES

DRAWN BY: P.F., R.F.

DATE: 6/11/24

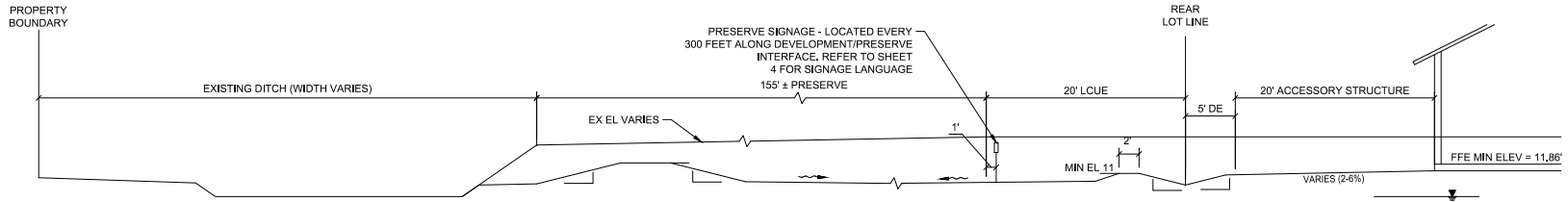
REVISIONS: 08/15/24

SCALE: 1"=1200'



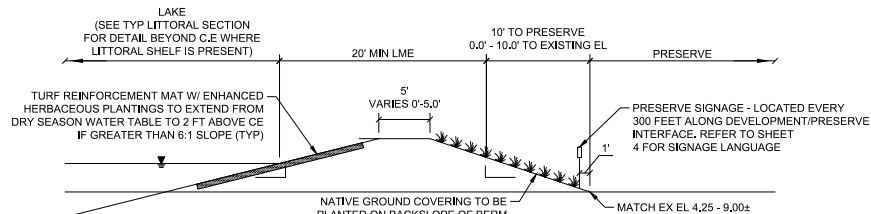
**SECTION A2-A2**

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**SECTION B4-B4**

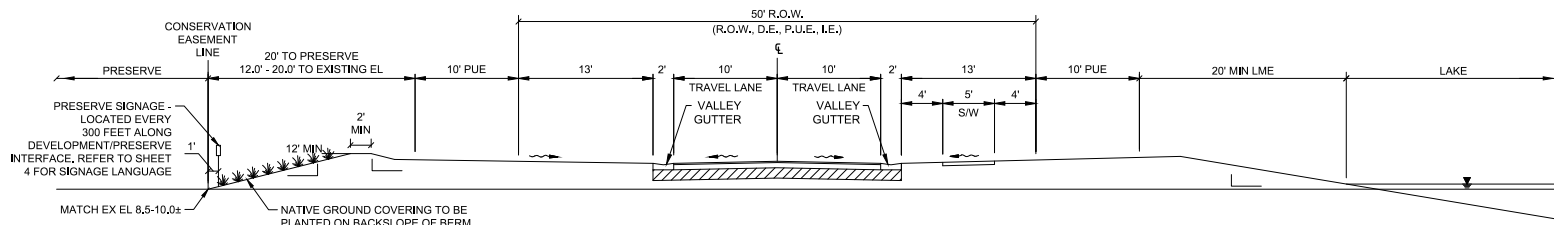
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**SECTION D3-D3**

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NOTES:  
 CROSS SECTIONS PER J.R. EVANS ENGINEERING,  
 DRAWING No. ACAD-10 CROSS SECTIONS.DWG  
 DATED JULY 25, 2024.



**SECTION E4-E4**

NTS

PROJECT NAME: CARY DUKE POVIA

**CROSS SECTIONS**

DWG. No. 22Ncc3903-40

SHEET: 40 OF 40

APPLICANT: NEAL COMMUNITIES

DRAWN BY: R.F.

DATE: 07/25/24

REVISIONS:

SCALE: N.T.S.