

**AMERICAN BALD EAGLE
LOW EFFECT HABITAT CONSERVATION PLAN
FOR THE HOMEPLACE II DEVELOPMENT AT LAKE WYLIE,
BELMONT, GASTON COUNTY, NORTH CAROLINA**

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SUBMITTED:

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TO

**INCORPORATED
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1.0. INTRODUCTION

1.1 Purpose

Incorporated (Applicant) is requesting authorization for the potential incidental taking of 1 bald eagle (*Haliaeetus leucocephalus*) nest currently under construction and any future bald eagle nests that may become located on his property at Lake Wylie, Belmont, Gaston County, North Carolina (Figure 1). The potential incidental taking of the eagle nest under construction includes habitat modification and associated disturbance during and following construction of a single-family home subdivision called Home Place II on Lake Wylie. The nest tree will not be disturbed. Twelve undeveloped residential lots and additional open space in the vicinity of the eagle nest tree are currently owned by the Applicant. Four of these lots were already under contract to be purchased prior to the initiation of nest construction and more lots have been sold since the discovery of nesting activity.

All existing lots surrounding the nest tree are slated for home construction. Disturbances caused by the development of Home Place II at Lake Wylie may have adverse impacts on the bald eagles at the nest and at any nests that may be constructed on the property in the future. Pursuant to Section 9 of the Endangered Species Act (ESA), these disturbances qualify as harassment and may result in the potential incidental taking of the nest and eagles. The purpose of this Low Effect Habitat Conservation Plan (HCP) is twofold. First, it is submitted as a required part of the application for an Incidental Take Permit (ITP) for the taking of 1 bald eagle

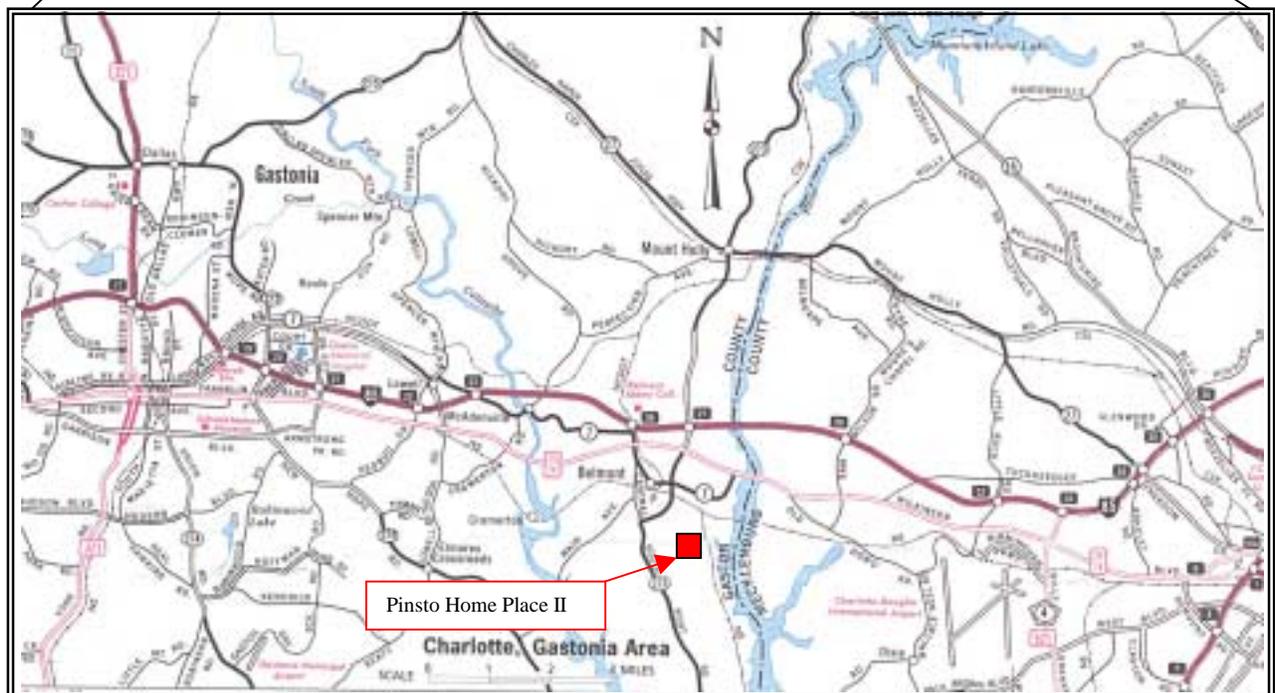


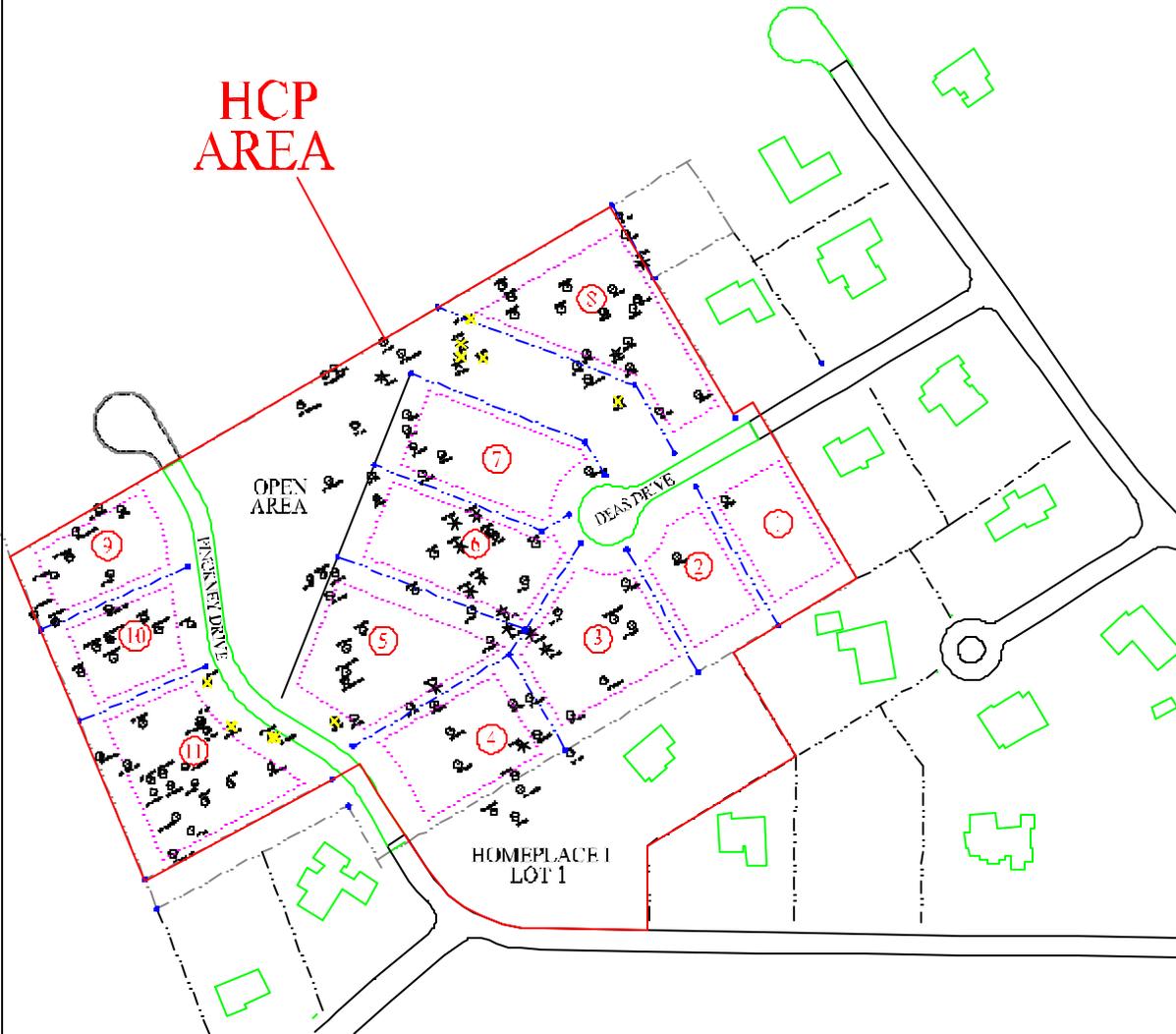
Figure 1. General location of the Home Place II subdivision near Lake Wylie, Belmont, Gaston County, North Carolina.

nest currently under construction and future eagle nests at Home Place II at Lake Wylie. Second, it is intended to outline the terms and conditions under which the Applicant will mitigate for this potential Incidental Take.

1.2 Project Location

The HCP Area addressed in this HCP consists of the Home Place II residential subdivision plus 1 additional adjacent lot on the northwest portion of Lake Wylie in Gaston County, North Carolina (Figure 1). The land on 3 sides of the proposed Home Place II subdivision is developed with single-family homes. The Pinsto Forest residential subdivision borders the proposed Home Place II subdivision to the east and south. A finger of Lake Wylie, which is an impoundment on the Catawba River, and a wastewater treatment plant are located approximately 1300 feet to the east and northeast, respectively. Another residential development is located to the west and an undeveloped area is located immediately to the north. The Charlotte International Airport is located approximately 4 miles to the east. The Home Place II subdivision is located within the town limits of the Town of Belmont. The Town of Belmont proper is located approximately 2 miles to the north and northwest.

The 13-acre HCP Area is comprised of 11 Home Place II lots designated for single-family homes, a twelfth lot designated for a single-family home that is part of a separate subdivision (Home Place I, Lot 1) and an undeveloped open space adjacent the Home Place II subdivision boundary (Figure 2). Lot sizes range from 0.50 to 1.78 acres. Access roads have been cleared, water and sewer lines are ready for installation and lot sales are in progress. The bald eagle nest addressed in this HCP is located in a tree on Lot 6 (Figure 2).



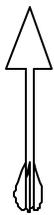
**HCP
AREA**

OPEN
AREA

DEAS DRIVE

PINEVIEW DRIVE

HOMEPLACE I
LOT 1



March 2001

1 inch = 225 feet

*Dr. J.H. Carter III
& Associates, Inc.*

Figure 2. HCP Area including Home Place II Lots, an open area and an adjacent subdivision lot near Lake Wylie, Belmont, Gaston County, North Carolina.

1.3 Background

The Applicant is developing approximately 13 acres of land (11 lots and a twelfth lot that remains from an earlier subdivision project) called the Home Place II subdivision. Residential construction and development of the Pinsto Forest subdivision, located immediately south and east of the Home Place II subdivision, began approximately 30 years ago and has been ongoing.

Since mid-November 2000, 1 to 2 bald eagles have been seen periodically roosting on a dead pine located on the property line of undeveloped Lots 3, 5 and 6 of the Home Place II subdivision. The pair of eagles consists of a mature and a subadult bird. This pair was seen carrying branches (nest material) to a pine tree located adjacent to the dead pine used for roosting. This nest structure located on Lot 6 consisted of only a few sticks and was unsuitable for egg laying (Figure 3). On 01 February 2001, a biologist saw the eagle pair carrying nest material to a different pine also located on Lot 6 of the Home Place II subdivision. The former nest site now appears abandoned and a substantial nest structure is now under construction at the second nest site (5 March 2001). Additionally, the dead pine used for roosting has fallen.

The Applicant first became aware of the eagle's presence on or about 19 December 2000, and immediately notified the North Carolina Wildlife Resources Commission (NCWRC) and the United States Fish and Wildlife Service (USFWS) in order to establish a dialogue on the eagle and their potential impact on the Home Place II development. Prior to the first observations of the eagles, the Applicant sold Lots 2, 3, 5 and 10. Lot 8 was sold in early January 2001 and earnest money has been deposited on Lot 4. The Applicant needs to file a subdivision plat by 15 April 2001 so that buyers can close on their lots. The remaining infrastructure for the Home Place II subdivision including water and sewer, stormwater basins and concrete curbs and gutters



Figure 3. Bald eagle nest located on Lot 6 (top) and view of the nest from the twelfth lot that remains from an earlier subdivision project (bottom) at the Home Place II subdivision near Lake Wylie, Belmont, Gaston County, North Carolina.

must be completed prior to submission of the subdivision plat. The Applicant anticipates this work will require 4 to 6 weeks to complete. Current financing arrangements require the Applicant to file the subdivision plat by 15 April 2001 and the Applicant faces severe financial consequences if it is unable to do so.

1.4 Endangered Species Act

Section 3 of the ESA defines “take” as any action that would “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect” any threatened or endangered species. “Harass”, as defined by regulation (*50 CFR 17.3*), includes “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering”. Any harassment caused by the development of lots surrounding the bald eagle nest under construction at Home Place II or future eagle nest sites would be incidental to otherwise legal activities, and would therefore be eligible for consideration for an ITP. The removal of nearby trees, human presence, construction activity and noise from residential occupancy may disturb eagles in the immediate area and prevent them from nesting at the Home Place II nest site, thus resulting in a potential incidental taking.

The *Habitat Management Guidelines for the Bald Eagle in the Southeast Region* (USFWS, 1987) (*Guidelines*) recommend a 750 foot buffer (primary zone) around a nest tree that is maintained to promote acceptable conditions for eagles. Recommended year-round maintenance in a primary zone includes: a) preventing residential, commercial or industrial development, tree cutting, logging, construction and mining and b) use of chemicals that are

toxic to wildlife. Unauthorized human entry into the primary zone should be restricted during the nesting season.

The “secondary zone” is defined as a protected area extending outward from the boundary of the primary zone. The *Guidelines* state that restrictions in the secondary zone are needed to minimize disturbance that might compromise the integrity of the primary zone and to protect important areas outside the primary zone. Recommended year-round restricted activities within the secondary zone include: a) development of new commercial and industrial sites, b) construction of multi-story buildings and high density housing developments between the nest and the eagle’s feeding area and c) use of chemicals toxic to wildlife. Other construction activities may take place within the secondary zone during the non-nesting season. Minor activities (e.g., fishing, camping, picnicking, hunting, recreational off-road vehicle use, hiking and bird-watching) are permitted year-round within the secondary zone. The layout of the secondary zone should be contiguous with foraging areas and provide protected access between the nest and foraging areas. The specific application of these management guidelines to this HCP will be addressed in section 3.3.1.

1.5 Bald and Golden Eagle Protection Act

Another federal regulation of potential concern to the Applicant is the Bald and Golden Eagle Protection Act (Act). The Act provides for the protection of bald and golden eagles (as amended in 1962) by prohibiting the take, possession, sale, purchase, barter, offer to sell, purchase or barter, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest or egg, unless allowed by permit (*16 U.S.C. 668(a), 50 CFR 22*). “Take” includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb (*16*

U.S.C. 668 (c), 50 CFR 22.3). While the Act covers direct impacts to the bird, nest and eggs, it does not include indirect impacts caused by disturbances to surrounding habitat. However, it is possible that if the nest tree is killed due to damage resulting from development, the Applicant could be held in violation of the Act. If the owners of Lots 3 and 5 take care not to damage the existing nest tree, the lot owners should not be at risk of violating the Act. Nonetheless, the Applicant would like assurances from the USFWS that, in conjunction with the ITP, the Applicant would not be held in violation of the Bald and Golden Eagle Protection Act for indirect impacts to the bald eagle due to habitat modification within the HCP Area for the life of this agreement.

2.0 AMERICAN BALD EAGLE BIOLOGICAL OVERVIEW

2.1 Site Characteristics and Vegetation

The 13-acre property owned by the Applicant at Lake Wylie is located in the southern Piedmont of North Carolina. The Dry-Mesic Oak-Hickory Forest vegetative community and other hardwood communities dominate uplands in the Lake Wylie area. Mixtures of oaks, hickories and pines dominate the overstory in the upland areas. Overstory species include white oak (*Quercus alba*), tulip poplar (*Liriodendron tulipifera*), sweet gum (*Liquidambar styraciflua*), beech (*Fagus grandiflora*), red maple (*Acer rubrum*) and shortleaf pine (*P. echinata*). Typical understory vegetation includes sourwood (*Oxydendrum arboreum*), red maple, sweet gum, tulip poplar and flowering dogwood (*Cornus florida*).

Although the majority of land included in the HCP Area is wooded and undeveloped, rough roads have been cut into the area. The land on 3 sides of the proposed Home Place II subdivision is developed with single-family homes. The Pinsto Forest residential subdivision

borders the Home Place II subdivision to the east and south. A finger of Lake Wylie, which is an impoundment on the Catawba River, and a wastewater treatment plant are located approximately 1300 feet to the east and northeast, respectively. An undeveloped area along an unnamed tributary of the Catawba River is located to the north. The Charlotte International Airport is located approximately 4 miles to the east. The Town of Belmont is located approximately 2 miles to the north and northwest.

2.2 Pertinent American Bald Eagle Biology

The bald eagle is a large, brown North American fish eagle in the hawk family (*Accipitridae*). It can range from 27-35 inches in length and weighs from 7 to 14 pounds. Its wingspan is almost 7 feet. The bald eagle's plumage is mostly dark brown and adults have a pure white head and tail. Both sexes look alike. Juveniles have dark brown heads and white mottling on the belly, wings and tail. Adult plumage is obtained in the fourth or fifth year.

The bald eagle is found throughout the lower 48 states of the United States, and in Alaska and Canada. It typically inhabits mature conifer forests close to clean bodies of water populated with fish, most often rivers, estuaries, coasts or large lakes. It feeds primarily on fish, when available, but may also eat other birds and mammals. It is sometimes a predator, catching surface fish and other prey in its talons, but more often is a scavenger, eating carrion from the ground (e.g. dead fish washed up on shore).

Bald eagles usually first breed at age 4-5 years and may mate for life. Its nesting season in the southeast United States is usually from mid-December through June. A typical nest consists of large sticks lined with softer materials such as weeds, grasses and sod. A nest may be reused and added to for years and can become quite large, measuring 6 to 8 feet across and up to

11 feet deep. Nests are typically built in the tops of very tall conifers located near water. Usually, the nest trees are taller than any surrounding trees.

Eagles usually lay 2 eggs (1-3) and incubation typically takes 34-38 days. The young fledge approximately 9 to 14 weeks after hatching. Eagles may live up to 30+ years in the wild and often return to within 100 miles of their birthplace to nest.

Potential eagle food sources on Lake Wylie appear spatially limited. Lake Wylie is formed by the impoundment of the Catawba River. The lake is essentially the flooded channel of the river and major tributaries. Most of the shoreline is relatively steep with little to no exposed shoreline. The wooded and developed shoreline provides poor habitat for eagles to scavenge dead fish.

The eagles at Lake Wylie have attempted nest building in 2 adjacent pines trees. The first nest site now appears abandoned and a substantial nest structure is now under construction at the second nest site (6 March 2001). The nest tree is a shortleaf pine approximately 85 feet tall and approximately 18 inches in diameter at breast height. The nest structure is located approximately 80 feet high in the upper canopy of the pine tree. The nest tree is located approximately 1300 feet from the nearest shore of Lake Wylie. The selection of the Lake Wylie nest trees is not characteristic of typical eagle nest trees. Nests are typically built in the tops of very tall conifers that are taller than any surrounding trees. The Home Place II eagle nests were attempted in the subcanopies of pines trees that are not higher than the surrounding forest canopy and the trees are not particularly large.

The nest building behavior of the eagle pair has been characteristic of an inexperienced breeding pair of eagles. The nest structures consisted of only a few sticks through the end of January 2001 and a substantial nest was not constructed during the normal egg-laying period in

North Carolina (December- January). The eagles only periodically worked on the nests (early morning and at dusk) and the eagles were also seen dropping many sticks. This behavior suggests the eagle pair has no prior breeding experience.

The project area in its present state is not particularly conducive to bald eagle inhabitation or nesting. The project area and associated lake shoreline are largely developed with residential subdivisions and other human infrastructure. The Pinsto Forest subdivision located south and adjacent to the project site is highly developed. A portion of the access road (Pinckney Drive) to the subdivision is located approximately 250 feet from the nest tree. This road is extremely busy with residents traveling to and from their homes in the Pinsto Forest subdivision. Typical residential activities occur daily in the vicinity of the nest tree (i.e., walking, bicycling, children playing, yard maintenance). The shoreline of Lake Wylie is steep and not particularly favorable for feeding on large live fish or dead fish that would wash ashore. The area generally lacks large towering conifers adjacent to the water's edge that are characteristic eagle nest and roost trees.

2.3 Impacts to the Bald Eagle

2.3.1 Historical Impacts and Current Status

As many as 75,000 pairs of nesting bald eagles may have lived in the lower 48 United States when the bird was adopted as our national symbol in 1782 (USFWS web page). It was a common nesting species along the coast of the Southeast as well as along major rivers and lakes. Its population diminished rapidly, however, due primarily to contamination of its food source by the pesticide DDT, and to a lesser degree by habitat destruction, nest disturbance and shooting. Nesting populations were reduced to less than 2% of their former numbers by the 1960s (NWF

1999). The bald eagle below the 40th parallel was listed as endangered in 1967 and received protection under the Endangered Species Act of 1973 (*16 U.S.C. 1531-1543*). Due to the banning of DDT, as well as efforts to protect the bald eagle and its habitat, and population reintroduction programs, its population has steadily increased. The bald eagle was reclassified as threatened throughout the continental United States in July 1995 (*Federal Register*, July 12, 1995). On 6 July 1999, the USFWS published a notice proposing removal of the bald eagle from Endangered Species Act protection within a year (*Federal Register* 64,128:36454-36464).

In the early 1940s, the bald eagle was considered “not uncommon” in the coastal region of North Carolina (Murphy 1989). However, by 1962 only 1 bald eagle breeding site was documented as active (Murphy 1989). During the past 16 years, the bald eagle population has been gradually increasing in North Carolina, as shown in Table 1 (provided by D. Allen, NCWRC, Nongame Section). As of 2000, 33 bald eagle nesting territories were documented in North Carolina (D. Allen, NCWRC, pers. comm.), 29 of which had breeding pairs of eagles that fledged chicks. A bald eagle nest exists on the Yadkin River in Stanly County in the south-central portion of the State. In February and March 1999, 2 bald eagles were seen building a nest on the Catawba River near a Duke Power electric generation facility on Lake Wylie, York County, South Carolina (USFWS, pers. comm.). The nest was never completed and no bald eagles have been seen since winter 1999-2000. This partial nest structure was located 12.1 miles south of the existing Home Place II bald eagle nest. In February 2001, a nest was found at Blewett Falls Lake, Anson County, with 2 adult bald eagles and 1 chick (M. Cantrell, USFWS, pers. comm.). An active eagle nest is located on Lake James, Burke County, North Carolina and is the only eagle nest known in the western third of the State.

County	Year	Production by Year																
	Found	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00
Hyde #1	84	2	3	1	0	2	0	2	0	1	0	0	*ND	ND	2	1	2	2
Washington #1	85			1	2	2		3	1	3	0	2	ND	2	2	1	2	3
Beaufort #1	88					2	2	2	1	1	0	0	1	ND	0	2	2	1
Chowan #1	90							2	2	1	2	2	1	0	0	0	ND	1
Chatham #1	91								0	0	2	1	0	0	1	1	1	1
Pasquotank #1	92									1	2	2	2	0	1	0	0	2
Chatham #2	94											0	3	0	3	3	1	1
Chowan #2	94											1	1	1	3	3	2	0
Granville #1	94											1	3	1	2	2	1	2
Guilford #1	94											1	1	2	2	1	2	Occ.
Tyrrell #1	95												1	1	1	0	ND	1
Stanly #1	95												0	0	1	3	0	1
Beaufort #2	96													1	0	1	2	2
Pitt #1	96													2	2	1	A	3
Pitt #2	96													2	0	A,ND	3	2
Pamlico #1	97														3	0	1	2
Pamlico#2	97														2	0	ND	1
Washington #2	97														1	0	ND	1
Stanly #2	97														0	0	0	0
Hyde #2	97														ND	ND	0	1
Continued on next page																		

ND = No data collected.

A = Active territory. The territory shows evidence of actual breeding such as incubation, eggs or young present, but no young apparently fledged.

Occ = Occupied territory. The territory shows the presence of one or more adults during the breeding season, but no nesting apparently occurred.

Table 1. Nesting Activity of Bald Eagles in North Carolina, 1984-2000*

2000 Summary: 33 occupied territories
32 active territories
29 successful nests
8 new nests in 2000

* Data provided by D. Allen, North Carolina Wildlife Resources Commission, Nongame Section

County	Year	Production by Year																
	Found	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00
Chatham #3	98															3	2	2
Chatham #4	98															2	2	A
Currituck #1	98															1	2	1
Currituck #2	98															2	2	0
Martin #1	98															0	0	0
Craven #1	98															1	2	2
Pitt #3	99																A	1
Burke #1	99																A	A
Wilson #1	99																1	1
Bertie #1	00																	A
Hyde #3	00																	1
Lenoir #1	00																	1
Anson #1	00																	1
Onslow #1	00																	2
Harnett #1	00																	3
Pamlico #3	00																	1
Tyrrell #2	00																	2
TOTAL		2	3	2	2	6	2	9	4	7	6	10	13	12	26	28	30	45

ND = No data collected.

A = Active territory. The territory shows evidence of actual breeding such as incubation, eggs or young present, but no young apparently fledged.

Occ = Occupied territory. The territory shows the presence of one or more adults during the breeding season, but no nesting apparently occurred.

Table 1 (cont.). Nesting Activity of Bald Eagles in North Carolina, 1984-2000*

2000 Summary: 33 occupied territories
32 active territories
29 successful nests
8 new nests in 2000

* Data provided by D. Allen, North Carolina Wildlife Resources Commission, Nongame Section

Presently, the Florida Fish and Wildlife Conservation Commission is conducting a monitoring study on fledgling survival of bald eagles from both rural and suburban areas in Florida. Their study monitors the migratory routes of these fledgling eagles using 5-year satellite transmitters. Several of these monitored eagles were tracked into North Carolina in 1998, 1999 and 2000, including parts of central and western North Carolina.

In mid-November 2000, a pair of bald eagles was discovered roosting in a dead pine tree near Lake Wylie, Gaston County, North Carolina. Subsequent observations showed the eagle pair attempting to build nests in 2 pine trees adjacent to the dead roost tree. This pair was initially seen carrying branches (nest material) to a pine tree located adjacent to the dead pine used for roosting. This nest structure, located on Lot 6 of Home Place II subdivision, consisted of only a few sticks and was unsuitable for egg laying (Figure 3). On 01 February 2001, a biologist saw the eagle pair carrying nest material to a different pine also located on Lot 6 of the Home Place II subdivision. The former nest site now appears abandoned and a substantial nest structure is now under construction at the second nest site (as of 6 March 2001). Additionally, the dead pine formally used for roosting has fallen. One eagle was seen roosting on the nest and 1 was roosting a live pine tree adjacent to the nest tree on 5 March 2001.

2.3.2 Impacts Due to Habitat Modification at Lake Wylie

Most of the land east, west and south of the proposed Home Place II subdivision has already been developed or the infrastructure is in place for development. Development of the remaining land around Lake Wylie is expected to occur. With the exception of the preliminary infrastructure already constructed on the Home Place II project site, all of the land included in

the HCP Area is currently undeveloped. Nonetheless, the development of the Applicant's lands and other lands surrounding Lake Wylie will result in the permanent alteration of natural and semi-natural habitats within the project area.

Primary impacts to the bald eagle include disturbances from typical residential construction activities such as the removal of trees, installation of water and sewer lines and electrical service, paving of streets, etc. The use of bulldozers, heavy machinery and noise from carpenters or other contractors using various tools would be temporary. Human activity and construction related noise would be most prevalent during daylight hours. After housing construction is completed, disturbance impacts will be caused by the occupancy of the residential homes located near existing and future bald eagle nest trees. Activities typical of residential use such as lighting, noise from automobiles, mowing lawns, outside human activities, loud music, etc., can cause continued disturbance and may possibly prevent a pair of bald eagles from nesting successfully in the area. Although it is generally thought that human development disturbs bald eagles and prevents them from nesting, a number of bald eagles have been known to adapt to residential disturbances and continue to nest or establish new nests near houses or other human developments (Millsap 1999). Thus it is possible that residential use of lots surrounding the existing nest and any future nests on Lake Wylie may not have adverse impacts.

Recreational use of the lake, such as camping, use of motorized boats and use of jet skis in potential foraging areas will also result in potential noise disturbances. Since bald eagle nesting occurs in the winter and spring in the Southeast, it is likely that camping and recreational use of the lake (typically occurring in the late spring and summer) will have little to no overlap with eagle nesting activity.

Other than the existing partial bald eagle nest at Home Place II, no other bald eagle nests have been found within the HCP Area. No other developed or undeveloped lands within the project area have a HCP Agreement. Further development of Pinsto Forest and areas adjacent to Lake Wylie is expected to occur. At some point, the existing bald eagle nest would be surrounded by development and less habitat would be available than would be the case if this HCP was approved.

2.3.2.1 Habitat Modification at the Home Place II Project Site

See Section 3.3.1

2.4 Impacts to Other Federally Listed Species

Several other federally listed species are known to occur in Gaston and Mecklenburg Counties, North Carolina (Table 2); however, no incidental take of other federally listed species is anticipated or requested.

3.0 AMERICAN BALD EAGLE CONSERVATION PLAN

3.1 Scope

The HCP Area consists of approximately 13 acres of land owned by the Applicant in the Home Place II subdivision plus an adjacent lot near Lake Wylie, Belmont, Gaston County, North Carolina (Figure 2). The HCP Area is predominantly wooded and undeveloped. The land on 3 sides of the proposed Home Place II subdivision is developed with single-family homes. The Town of Belmont is located approximately 2 miles to the north and northwest.

Table 2. Protected species that may occur in the Lake Wylie area, Gaston and Mecklenburg Counties, North Carolina.

Scientific Name	Common Name	Federal Status
VASCULAR PLANTS		
<i>Delphinium exaltum</i>	tall larkspur	FSC
<i>Echinacea laevigata</i>	smooth coneflower	E
<i>Helianthus schweinitzii</i>	Schweinitz's sunflower	E
<i>Isoetes virginica</i>	Virginia quillwort	FSC
<i>Lotus helleri</i>	Carolina birdfoot-trefoil	FSC
<i>Rhus michauxii</i>	Michaux's sumac	E
VERTEBRATES		
<i>Clemmys muhlenbergii</i>	bog turtle	T (S/A)
<i>Etheostoma collis</i> pop. 1	Carolina darter	FSC
<i>Haliaeetus leucocephalus</i>	bald eagle	LT-PD
INVERTEBRATES		
<i>Speyeria Diana</i>	Diana fritillary	FSC
<i>Lasmigona decorata</i>	Carolina heelsplitter	E
<i>Villosa vaughaniana</i>	Carolina creekshell	FSC

Key:

Federal:

E = Endangered

FSC = Federally listed Special Concern

T(S/A) = Threatened by similarity of appearance

LT-PD = Listed threatened – proposed delisting

This HCP outlines the Applicant's mitigation and monitoring responsibilities in exchange for the potential incidental taking of the bald eagle nest(s) at Home Place II, as well as any other naturally occurring bald eagle nests found in the HCP Area. The mitigation described in Section 3.3 of this HCP shall be carried out for 3 years (through June 2004). The infrastructure construction will be completed in less than 6 months and residential construction and related habitat modifications is expected to be completed over the next 3 years. Therefore, the mitigation will be carried out over that same time frame (through June 2004).

3.2 Alternatives

3.2.1 No Action

There are few practical alternatives to the proposed potential incidental take of the existing bald eagle nest in the HCP Area. In an attempt to avoid take, the Applicant could follow the *Guidelines* with its recommended buffers. The buffers would encompass all of the Home Place II lots and other privately owned lots within the Pinsto Forest subdivision. Therefore, the Applicant would forgo development of all lots in the Home Place II subdivision. Four of the 11 lots in the Home Place II subdivision were sold prior to the first eagle observations and Lot 8 was sold in January 2001. This alternative would have severe economic consequences for the Applicant, lot purchasers and current residents in Pinsto Forest. The no action alternative would result in the bankruptcy of a small business, make lots purchased by homeowners nearly worthless and severely restrict land use by existing homeowners.

This alternative would not necessarily secure the long-term viability of the bald eagle at Lake Wylie or promote its recovery in North Carolina, as these eagles seem to have already acclimatized themselves to human activity.. The HCP area is only a small area within the territory of the eagle pair and protection of the HCP area is probably not necessary for long-term

survival. Further, with or without the HCP area, the eagle pair may select an alternative nest site in subsequent years.

3.2.2 Reduced Take Alternatives

3.2.2.1 Alternative 1

At present, the bald eagle is proposed for de-listing to candidate status. Assuming he has the financial wherewithal, the Applicant could choose to postpone development of land surrounding the bald eagle nest until after the bald eagle is removed from the list of threatened species. The eagle would still be protected by the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act and the Lacey Act. Bald eagle habitat, however, is not protected by any of these laws. Thus, it is possible that the project site could be developed in the near future without a HCP or ITP. Regardless, this alternative would require the Applicant to require the lot owners within the HCP Area to postpone development of their lots for an undefined period of time (until the bald eagle is de-listed). Again, this alternative could have severe economic consequences for the Applicant and adjoining lot owners and would not secure the long-term survival of the bald eagle at Lake Wylie or promote its recovery in North Carolina.

3.2.3 Proposed Plan – Preferred Alternative

The Applicant proposes to mitigate for the potential incidental take of the existing bald eagle nest at Home Place II by establishing Primary and Secondary Protected Property Zones and placing general restrictions on Lots 1, 2, 3, 4, 5, 6, 7 and 8 and an open area of the Home Place subdivision and Home Place I, Lot 1 at Pinsto Forest (tax parcel number 1553104) (Figure 4). These use restrictions (described in Section 3.3.1 – On-Site Mitigation and Minimization Measures below) designed to prohibit activities that might harass or otherwise significantly

impair the breeding activity of the eagles. The restrictions would prohibit changes to the habitat that the eagles are frequenting and would place restrictions on Lot 6 that make the lot unmarketable for so long as the USFWS deems bald eagles need to be protected. The preferred alternative will preserve bald eagle habitat with that might otherwise be destroyed. The proposed restrictions would also minimize human disturbance.

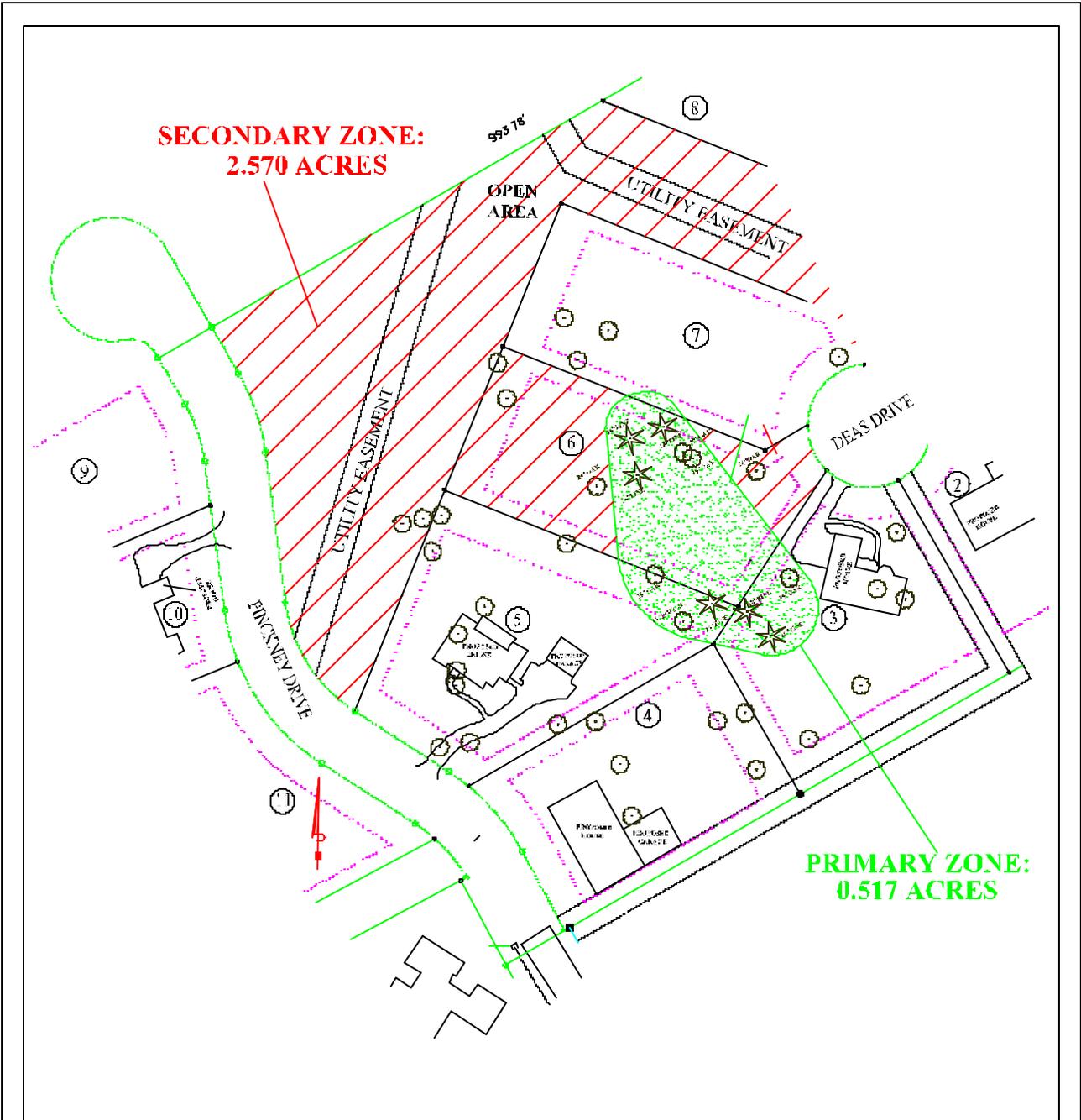
This preferred alternative best meets the Applicant's need for reasonable use of his property, while protecting him from potential liability under Section 9 of the ESA and providing him with regulatory certainty with regards to development of his lands. The Applicant will commit to performing the mitigation and monitoring activities as prescribed in this HCP.

3.3 On-Site Mitigation and Minimization Measures

3.3.1 On-Site Mitigation or Replacement

The 13+-acre HCP Area consists of 11 lots of the Home Place II subdivision, a twelfth 1.78-acre lot that is part of an earlier subdivision project (Home Place I, Lot 1) and an open space that is part of the Home Place II subdivision (Figure 2). The Applicant proposes establishment of protected property zones within the HCP Area (Figure 4). The Primary Protected Property Zone, which encompasses 0.517 acre, involves certain portions of Home Place II Lots 3, 5, 6 and 7 (Figure 4). The Secondary Protected Property Zone (2.57 acres) involves the remainder of Lot 6 and an undeveloped open area in the Home Place subdivision (Figure 4).

The Applicant proposes the following Covenants and Restrictions to be imposed on the lots within the Primary and Secondary Protected Property Zones:



March 2001

1 inch = 120 feet

Figure 4. Location of primary and secondary protected property zones at Lot 6 (and Portions of Lots 3, 5 and 7) of the Home Place II subdivision near Lake Wylie, Belmont, Gaston County, North Carolina.

Dr. J.H. Carter III & Associates, Inc.

- 1) Any change, disturbance, alteration or impairment of the natural features located within the Primary and Secondary Protected Property Zones or any introduction of non-native plant species is prohibited.
- 2) There shall be no constructing or placing on or above the Primary and Secondary Protected Property Zones of (a) any building, mobile home, asphalt or concrete pavement, bill board or other advertising display, antenna, utility pole, tower, conduit or line or b) any other temporary or permanent structure or facility.
- 3) Agricultural, grazing and horticultural use of the Primary and Secondary Protected Property Zones is prohibited.
- 4) There may be no destruction or cutting of trees or plants within the Primary and Secondary Protected Property Zones, except as necessary to control insects, disease, noxious weeds or invasive plant species (“Control Activities”). Control Activities are not permitted during the nesting season.
- 5) Undeveloped recreational uses (including, without limitation hiking and walking) of, and access to, the Primary and Secondary Protected Property Zone are permitted except during the nesting season.
- 6) Scientific, educational and charitable uses (including, without limitation, organized educational activities such as site visits, studies and observations) of the Primary and Secondary Zones and the right of access to the Primary Protected Property Zone for such purposes are permitted except during the nesting season.

The following activities are prohibited, restricted or permitted during the nesting season on Lots 1, 2, 3, 4, 5, 6, 7 and 8 of the Home Place II subdivision and Home Place I, Lot 1 (Figure 2) at Pinsto Forest (tax parcel identification number 1553104).

- 1) Outdoor construction activities other than landscaping, painting and masonry are prohibited.
- 2) Indoor construction activities are permitted, except that no indoor construction may take place earlier than one-half hour after sunrise (as determined by the US Naval Observatory) and later than one-half hour before sunset (as determined by the US Naval Observatory).
- 3) Outdoor landscaping, painting and masonry activities are permitted, except that no outdoor activities may take place earlier than one-half hour after sunrise (as determined by the US Naval Observatory) or later than one-half hour before sunset as determined by the US Naval Observatory), and provided further that any permitted outdoor activities during the nesting season shall not use heavy machinery that introduce sudden or novel noises to the environment.
- 4) Recreational uses (including, without limitation, hiking and walking) of the portions of the subdivision that are not part of the Protected Property Zones are permitted during the period between November 15 and June 15.

Nesting season shall be during the period of November 15 through June 15, except that the nesting season may end earlier than June 15 if the USFWS or its designee determines that 1) no bald eagles have been observed within the Primary Protected Property Zone after November 15 and for an additional 8 weeks, 2) any bald eagles observed in the Primary Protected Property Zone after November 15 are not engaged in behavior that is likely to lead to breeding, 3) there

are no bald eagle eggs in any nest located within the Primary Protected Property Zone or 4) all bald eagle chicks in a nest located within the Primary Protected Property Zone have fledged.

Notwithstanding the foregoing, activities in the Secondary Protected Property Zone necessary to maintain water and sewer lines located therein or comply with water supply or drainage covenants or easements (Figure 4), are permitted without regard to nesting season.

3.3.2 Minimization of Impact to the Existing Nest at Home Place II

See Section 3.3.

3.4 Off-Site Mitigation and Minimization Measures

3.4.1 Off-Site Mitigation or Replacement

The Applicant will contribute \$1,200.00 to the Carolina Raptor Center to be used specifically for eagle rehabilitation and education.

3.5 Monitoring and Reporting

Following are the monitoring and reporting responsibilities of the Applicant:

- 1) The Applicant will be responsible for monitoring the HCP Area for the occurrence of bald eagle nests for the length of this agreement (3 years). Monitoring will include checking of the Primary Protected Property Zone twice a year between December and February for signs of bald eagle nesting activity. If a bald eagle nest is detected, the Applicant will inform the USFWS and/or the N.C. Wildlife Resource Commission.
- 2) The Applicant will allow the USFWS or other properly permitted and qualified persons designated by that agency to enter Applicant-owned properties in the HCP Area upon reasonable advanced notice (verbal or written request 48 hours in advance) for the

purpose of monitoring the nest, mitigation sites and any bald eagles. Access to properties not owned by the Applicant must be obtained from the respective lot owners when needed.

- 3) The Applicant will submit an annual report by 30 May to the USFWS and State detailing the results of work achieved and relevant observations made.

Monitoring shall be considered complete at the end of the 3-year period (June 2004).

3.6 Unforeseen Circumstances

If the Applicant or USFWS become aware of any unforeseen circumstances that are not covered by this HCP, all parties involved must be notified and potential modifications to the HCP shall be jointly agreed upon. Either party will notify the other party by telephone or electronic mail within 48 hours and/or hardcopy by mail within 1 week. Either party will arrange a meeting to discuss necessary issues within 48 hours.

3.7 Permit Amendments

Any formal amendment to this HCP will follow the standard permitting procedures, including written notification to the USFWS with supporting information and justification. Formal amendments include those changes that will significantly alter the requirements of the HCP or cause adverse effects to the bald eagle. Informal amendments to this HCP may occur upon written notification to the USFWS. Informal amendments include any minor changes that will not significantly alter the requirements of this HCP or produce an adverse effect on the bald eagle. Both formal and informal amendments must be approved in advance by the USFWS. The

Applicant may, with the concurrence of the USFWS, apply for an extension of this HCP beyond the 3 year permit period should circumstances warrant.

4.0 SUMMARY

The Applicant is proposing to develop approximately 13 acres of land (11 lots and a twelfth lot that remains from an earlier subdivision project) called the Home Place II subdivision, near Lake Wylie, Belmont, Gaston County North Carolina.

Since mid-November 2000, 1 to 2 bald eagles have been seen periodically roosting on a dead pine located on the property line of undeveloped Lots 3, 5 and 6 of the Home Place II subdivision. This pair was seen carrying branches (nest material) to a pine tree located adjacent to the dead pine used for roosting. This nest structure located on Lot 6 consisted of only a few sticks and was unsuitable for egg laying. On 01 February 2001, a biologist saw the eagle pair carrying nest material to a different pine also located on Lot 6 of the Home Place II subdivision.

Prior to the first observations of the eagles, the Applicant sold Lots 2, 3, 5 and 10. Lot 8 was sold in early January 2001 and earnest money has been deposited on Lot 4. The Applicant must file a subdivision plat by 15 April 2001 in order for the buyers to close on their lots. The owners of these lots will be developing single-family homes in the near future. The Applicant must sell and develop the remaining lots in the Home Place II subdivision needs and to avoid significant financial hardship. The Applicant proposes that the ITP include any bald eagle nests found within the HCP Area during the next 3 years. Mitigation for the loss of the existing nest and possible future nests will involve establishment of 3.087 acres of Primary and Secondary Protected Property Zones located within and adjacent to the Home Place II subdivision. Development within and outside the protection zones will be restricted.

4.1 Minimization and Mitigation to the Maximum Extent Possible

Issuance of an ITP requires the Applicant to minimize and mitigate the effects of the HCP to the maximum extent practicable. In Sections 3.3 and 3.4 the Applicant proposes Onsite and Off-site Mitigation and Minimization Measures to consist of 1) establishment of a protected area around the existing eagle nest; 2) seasonal construction and disturbance restrictions and 3) contribution of funds for rehabilitation of injured bald eagles and education of the public. Since the eagle pair chose to construct the nest in a developed area, these mitigative measures should offset any adverse impacts to the eagles and the existing nest. It is also possible that residential use of lots surrounding the existing nest and any future nests on Lake Wylie may not have adverse impacts on the eagles.

Given the scale of this development, these mitigative measures are the maximum affordable.

5.0 REFERENCES

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