

March 12, 2021

Naperville Planning and Zoning Commission
City of Naperville
400 S. Eagle Street
Naperville, IL 60540

Re: *Naper Commons – Pulte Home Company, LLC*

Dear Chairman Hanson,

As you know, I represent Pulte Home Company, LLC, a Michigan limited liability company (“Pulte”), regarding entitlements to facilitate the development of Naper Commons, a new mixed-residential subdivision proposed for Lot 4 of the Nokia Campus in the City of Naperville.

The project has generated feedback from a wide variety of interest groups- from City staff’s challenge to present a unique plan to late-breaking information about potential impacts to a bald eagle nest. Our team has consistently worked to provide practical answers to questions and incorporate community feedback into updated plans that maintain the integrity of the development concept for Naper Commons. We submitted revised plans to City staff on February 24th and believe that we have reasonably addressed all the issues that have been presented. There are a couple of details that I would like to identify in advance of next week’s hearing.

1. Density. The original submittal was 100% compliant with the density requirements of the existing R-2 zoning of the property. To be responsive to feedback, we’ve reconfigured the proposal and eliminated 17 units. The revised submittal is 227 total units made up of 43 Estate Series Homes, 118 Meadows Series homes and 66 townhomes. The subdivision is now well below Naperville’s “medium-density” and just above Naperville’s “low-density” classifications. At 3.51 du/ac, the proposal is appropriate given the location and existing R-2 zoning, and is well within the range of the adjacent Fairmeadow neighborhood - 1.44 du/ac and the Danada Townhomes - 6.1 du/ac.
2. Open Space. Open space is not a requirement of every residential development, but is a unique requirement associated with a planned unit development. In a planned unit development, open space provides a unique public benefit that justifies relief from the otherwise stringent requirements of the City’s zoning ordinance. 25% open space is required for a single-family detached residential subdivision. 30% open space is required for a single-family attached residential subdivision. At Naper Commons, a mixed-residential community, we are now providing 36.61% open space. Notably, this calculation does not include an extraordinary 2-acre public park that will be the centerpiece and primary attraction of the subdivision.
3. Buffer Yards. Under the City’s zoning ordinance, buffer yards are required between incompatible uses such as an office parking lot and adjacent single-family homes. The residential use at Naper Commons is not incompatible with the surrounding uses. Nevertheless, we have worked to incorporate significant buffer yards in the revised plan. Adjacent to the Danada Townhomes, utilities have been reconfigured to preserve existing trees and provide significant new landscape installations. Adjacent to Fairmeadow, a 55’ common area outlot will be owned and maintained

by the Naper Commons Homeowner's Association and planted with a significant new tree line. Adjacent to the Forest Preserve, a 25' common area outlot to be owned and maintained by the Naper Commons Homeowner's Association will be delineated by a split-rail fence and planted with a native plant mix specifically coordinated with the Forest Preserve staff. These buffer yards represent a significant dedication of private property to minimize perceived impact to adjacent parcels, even though they are not required by Naperville code.

4. Bald Eagles. The presence of a bald eagle's nest was first raised the day before the last public hearing. We immediately began to work with relevant experts to respond to these new facts. In coordination with the US Fish and Wildlife Service, the nest was identified and mapped. The Service notes that the nest is in the Forest Preserve and over 1,000 feet from any proposed residential lot. Based on the investigation, Cathy Pollack of the US Fish and Wildlife Service has advised that "no permit is recommended or required" and that "the distance of 824' (nest to nearest property line) is well outside an area of concern." A copy of the correspondence from Ms. Pollack has been provided to City staff.
5. Great Blue Herons. Great Blue Herons were not flagged in our EcoCAT investigation with the Illinois Department of Natural Resources because they are neither threatened or endangered species under state or federal law. According to the International Union for Conservation of Nature and Natural Resources (www.iucnredlist.org), the Great Blue Heron is neither "vulnerable" or "near threatened," but is ranked of "least concern" on their threatened and endangered species list. The US Fish and Wildlife Service has confirmed that there is no restriction or permitting requirement associated with the Great Blue Heron, stating only that "if trees where herons are breeding or roosting are to be removed for this project we recommend that they be removed outside of the nesting season." Naper Commons will not involve the removal of any heron habitat. Attached as reference is an article from the Daily Herald which quotes Eric Neidy, Director of Natural Resources for the Forest Preserve District of DuPage County, who comments that it is "very common" for rookeries to move around in DuPage County out of "natural necessity."
6. Forest Preserve District. The Forest Preserve District raised a number of "comments" in letters dated December 14, 2020 and February 2, 2021. We had the opportunity to meet with Forest Preserve staff on March 3, 2021. We were advised that the Forest Preserve was not "objecting" to Naper Commons, but raising "comments" that they believed to be important discussion points. We believe that we had addressed Forest Preserve comments by: i) evidencing reduced runoff and treatment of stormwater tributary to the Forest Preserve property; ii) coordinating native landscape installations directly with district staff; iii) agreeing to comply with International Dark Sky Association requirements; iv) prohibiting the private use of coal tar products; v) prohibiting the private use of sodium chloride products; vi) providing engineering calculations showing the relocation of the Hesterman storm sewer will not impact drainage; and vii) creating a dedicated 25' outlot to ensure residential yards do not encroach or otherwise impact the Forest Preserve.

As is our reputation, we have worked hard to refine project details and present practical solutions to community concerns. We sincerely appreciate the many hours you dedicate to public service and would respectfully request your recommendation of the revised plans for Naper Commons.

Very truly yours,

Russell G. Whitaker, III

Russell G. Whitaker, III
Attorney for Petitioner

Heron rookery no longer at Naperville site being eyed by developer



Great blue herons make their nests and rookeries among leafless trees in marshy areas so they can have enough space and see their predators. But when trees fall down or too many herons congregate in one spot, the animals tend to nest in a new location. (*Courtesy of DuPage County Forest Preserve*)



Marie Wilson

Updated

4/20/2018 9:41 AM

If neighbors oppose a residential development being considered for a site between the Nokia building in Naperville and Danada Forest Preserves, a great blue heron rookery won't be the reason.

A rookery that at its peak in 2008 featured 152 nests of the large, marshland birds now has moved on -- for its own natural reasons, forest

preserve officials say.

"While it may sound alarming, it's actually very common," said Erik Neidy, director of natural resources. "Our rookeries move around quite a bit in DuPage County."

That's not to say construction of houses, duplexes, townhouses and apartments -- which homebuilder K. Hovnanian Homes (<https://www.khov.com/>) is considering after a preliminary meeting with the Naperville City Council -- would have no affect on the 797-acre preserve.

But it could put at ease activists like the ones who worried about the Danada (<http://www.dupageforest.org/places-to-go/forest-preserves/danada>) rookery in 2014, when the Chicago Symphony Orchestra was considering buying the 58-acre site near Naperville and Warrenville roads for use as a summer concert venue.

Neidy said the rookery relocated out of natural necessity.

Great blue herons are "great hunters," Neidy said, and they make their homes in wetlands where they can snag fish, frogs and baby turtles, which they swallow whole. They look for barren, leafless trees in which to build their large nests and lay an average of four eggs a year. There, they gain a clear vantage point to be on the lookout for predators. Where herons can find food and protect their young, their rookeries thrive, Neidy said.

But gathering too many of the birds in one place can spell the beginning of the end. Blame the poop.

An acid found in the feces of great blue herons is "very strong," Neidy said, and speeds the process of tree death. Dead trees rooted in a soggy marsh can only stand for so long.

"The wind starts to knock down a lot of trees, so the nests start to fall apart," Neidy said.

That's likely what happened at Danada, where this flock of herons first set up a home in 1997 after moving from Pratt's Wayne Woods (<http://www.dupageforest.org/places-to-go/forest-preserves/pratts-wayne-woods>) on the northern side of the county, Neidy said. By 2004, there were 85 nests. Four years later, the count peaked at 152.

By the time Mary Lou Wehrli, a forest preserve commissioner, walked the site this spring in advance of an April 9 meeting about the Nokia property, she said the rookery was gone.

Neidy said forest preserve employees noticed the same thing last spring on their yearly count of rookeries, which is set to take place again later this season. Last year, the district observed one nest in Danada and 158 at a new location, Winfield Mounds (<http://www.dupageforest.org/places-to-go/forest-preserves/winfield-mounds>), so it's likely the former Danada birds moved there.

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February 24, 2021

Development Review Team
City of Naperville
400 S. Eagle Street
Naperville, IL 60540

Re: Naper Commons – Pulte Home Company, LLC
Revised Plans

Dear City of Naperville,

Pulte has resubmitted documents in connection with the Naper Commons Project as of the date of this letter. For your convenience, below is a list of the changes that were made to the plans:

- Removal of 10 Meadows units and 2 Estates Units. Overall unit count is now as follows:
 - Townhomes: 66 Units
 - Meadows: 118 Units
 - Estates: 43 Units
 - **TOTAL: 227 Units**
- Inclusion of 25' landscape easement consisting of native grasses in the rear of lots adjacent to Danada Forest Preserve.
- Inclusion of a 55' buffer between Naper Commons and Fairmeadow Subdivision to provide additional separation between the two communities.
- Statement of Intent and Concept on PUD Plat has been revised to include the referenced 55' buffer between Naper Commons and Fairmeadow along with the 25' buffer between Naper Commons and the Forest Preserve District.
- All other submitted plans have been revised to reflect the aforementioned changes.

Should you have any questions regarding the revised plans for Naper Commons, please do not hesitate to reach out to our office to discuss.

Very truly yours,

Caitlin E. Csuk
Caitlin E. Csuk

From: Russell Whitaker <russ@rw-attorneys.com>
Sent: Tuesday, March 9, 2021 3:48 PM
To: Laff, Allison; Venard, Erin
Cc: Caitlin Paloian
Subject: FW: [EXTERNAL] RE: Pulte Development, DuPage County, IL
Attachments: EAGLE NEST SITE AERIAL w coords of Nest.pdf

CAUTION: This e-mail originated outside of the City of Naperville (@naperville.il.us).

DO NOT click links or open attachments unless you confirm the incoming address of the sender and know the content is safe.

Allison & Erin,

Attached is a map which depicts the location of the Eagle's Nest on the Forest Preserve Property. We provided information to US Fish and Wildlife, which is the relevant federal agency, and received the responses below. We think these emails address the heron/eagle issues in their entirety. Please note that we did not have the revised site plan at the time of communication with USFWS, so the attached map uses the old plan configuration. The boundaries do not change with the revised plan and homes are only shifted farther from the next in the revised configuration. Please let us know if you have any questions or concerns.

Russ

Russell G. Whitaker, III
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630-880-7273 (cell)

From: Rob Getz <Robert.Getz@PulteGroup.com>
Sent: Wednesday, February 10, 2021 9:33 AM
To: Russell G. Whitaker (russ@rw-attorneys.com) <russ@rw-attorneys.com>
Subject: FW: [EXTERNAL] RE: Pulte Development, DuPage County, IL

From: Pollack, Cathy <cathy_pollack@fws.gov>
Sent: Wednesday, February 10, 2021 9:27 AM
To: Rob Getz <Robert.Getz@PulteGroup.com>
Cc: Tom Velat <tvelat@dupageforest.org>
Subject: Re: [EXTERNAL] RE: Pulte Development, DuPage County, IL

Hi Rob,

Although you and I had spoken on the phone regarding heron rookeries, my comments had not addressed heron rookeries because the documents submitted for this proposed project do not indicate that the project would need to remove trees associated with any heron rookery which could result in the “take” of herons.

To be protective of the herons, if trees where herons are breeding or roosting are to be removed for this project we recommend that they be removed outside of the nesting season (the nesting season is early March to the end of August for most birds).

Thanks,
Cathy

Cathy Pollack
U.S. Fish & Wildlife Service
Chicago Ecological Services Office
230 South Dearborn Street, Suite 2938
Chicago, IL 60604
847-608-3101

From: Rob Getz <Robert.Getz@PulteGroup.com>
Sent: Tuesday, February 9, 2021 3:47 PM
To: Pollack, Cathy <cathy_pollack@fws.gov>
Subject: [EXTERNAL] RE: Pulte Development, DuPage County, IL

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Cathy –

Thanks for the email. I noticed there was nothing in relation to Herons, their presence near our site, or their ability to co-habitate with eagles.

Thanks for your help.

Rob

From: Pollack, Cathy <cathy_pollack@fws.gov>
Sent: Tuesday, February 9, 2021 3:32 PM
To: Rob Getz <Robert.Getz@PulteGroup.com>
Cc: Endrizzi, Deanne <deanne_endrizzi@fws.gov>; Tom Velat <tvelat@dupageforest.org>
Subject: Pulte Development, DuPage County, IL

External Sender

Dear Mr. Getz:

This email responds to your February 5, 2021 email, including seven attachments, regarding the proposed development of attached single family homes at a property located at 1960-2000 Lucent Lane, Lot 4 in the Nokia campus subdivision in Naperville, DuPage County, Illinois.

This proposed development is adjacent to Danada Forest Preserve which supports an active nesting pair of bald eagles (*Haliaeetus leucocephalus*).

Although bald eagles were removed from the Endangered Species List in August 2007, they are still protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Act.

I discussed your project with our Midwest Regional Office, Migratory Bird Permits staff. They advised me that most situations that require permits are where humans are moving into areas where eagles are not used to human disturbance of any kind, and within 100 feet of the nest. They also shared that foot traffic is more of a concern than vehicles or heavy equipment, especially in well populated areas as this, within an urban/suburban setting.

The Fish and Wildlife Service recommends applying for an Incidental Take Permit when activities, any time of the year, are within 330 feet of the nest, or if construction activities during the eagles' breeding season (Jan. 1 through August 30) are within 330 to 660 feet of the nest.

In this case, it appears that the closest boundary of the proposed project to the nest is 824 feet and that mature trees will remain between this boundary and the nest. For activities such as this, which are greater than 660 feet from a nest, no permit is recommended or required. This distance of 824 feet is well outside an area of concern.

If you have further questions regarding this particular project and eagle disturbance or incidental take permits please contact Deanne Endrizzi (copied here):

Deanne Endrizzi
US Fish and Wildlife Service
Midwest Regional Office, Migratory Bird Permits
Phone: 612-713-5441
Email: deanne_endrizzi@fws.gov

In discussing this project within my office, we note that developments occurring adjacent to wetlands and other natural areas can cause adverse impacts to the natural communities through water quality and quantity changes in stormwater runoff, through increased use of

insecticides and herbicides, and through introduction of invasive plants. We encourage you to work with the Forest Preserve District of DuPage County to incorporate conservation design principles and best management practices into your project to minimize these potential adverse impacts to the adjacent preserve lands.

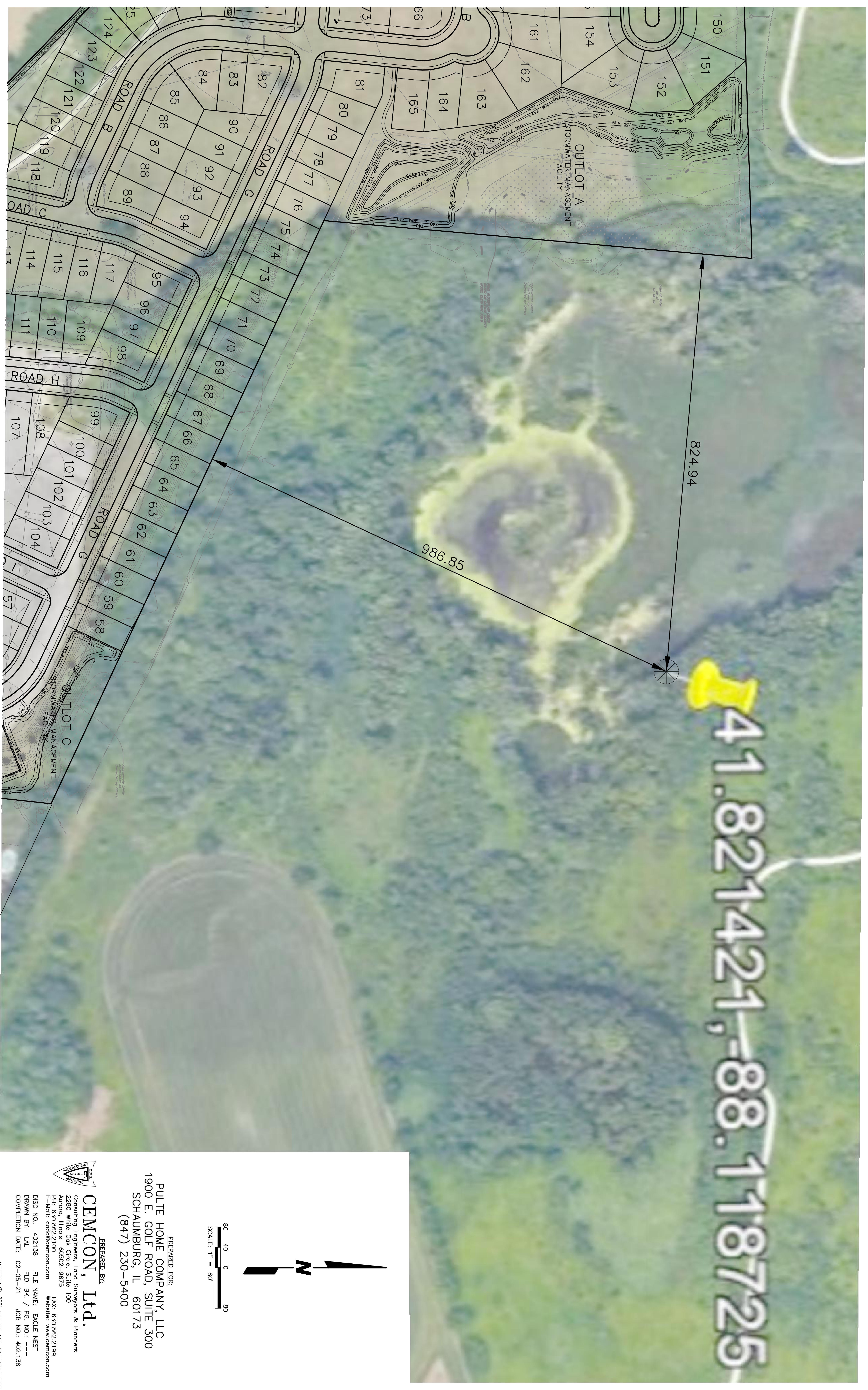
Thank you,
Cathy

Cathy Pollack
[U.S. Fish & Wildlife Service](#)
[Chicago Ecological Services Office](#)
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847-608-3101

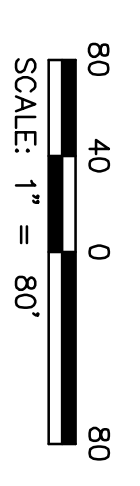
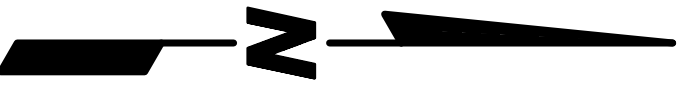
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EAGLE NEST LOCATION



41.8214221, -88.118725



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COMPLETION DATE: 02-05-21 JOB NO.: 402.138