

The Council of Civic Associations, Inc.

24910 Goldcrest Drive

Bonita Springs , Florida 34134

May 26, 2009

Mr. Thomas Strickland, Assistant Secretary for
Fish and Wildlife and Parks
Department of Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Strickland:

The following report has been prepared by the Council of Civic Associations, Inc., a not-for-profit organization founded in 1996. We are affiliated with over 70 Civic organizations, government liaisons and community leaders in South Florida . Our goal is to make government at all levels accountable for enforcing the laws for which they are responsible, for the benefit of all citizens and not just specific special interest groups.

The report is divided into three parts: (1) USFWS R4, A Failed Agency; (2) The Picayune Strand Biological Opinion” and (3) “The Florida Panther Protection Plan Memorandum of Agreement.” The Corps, EPA and FWS are not performing their statutorily mandated duties to protect Florida ’s endangered species. The Corps with FWS agreement and under pressure from lobbyists and politicians continues to permit development in habitat essential to the Florida panther and other endangered species. The Department of Interior must insist that the FWS meet mandated public trust responsibilities under the Clean Water Act and Endangered Species Act. Towards that end we are asking you to:

- (1) Conduct an inquiry into allegations of fraud (Attachment #1) and mismanagement (refer to report).
- (2) Pursue designation of critical habitat for the panther (there is none)
- (3) Conduct a study on how much public land is actually being managed for the panther.
- (4) Review Picayune Strand Restoration construction projects including pumps, water levels, allocation of water, (currently in pre-litigation discussion between Collier county and Naples), levee system, and canals to ensure that it is a true historic sheet flow restoration and not a South Florida Water Management

District/COE plumbing project to control flooding and accommodate future development.

(5) Determine what is the appropriate role of the Fish and Wildlife Service in the Florida Panther Protection Program – a stakeholder controlled project.

(6) Purchase land for preservation. The FWS needs to say “these areas are off limits.” Ask FWS in their calculations what is needed for a viable population – need X amount of land. Buy it in period of crashing land values.

We have written the attached report in “bullet” form for quick overview. Documents and sources are available that support allegations and other.

Thank you for your kind attention. You may reach me during summer months at 608-238-0539.

Sincerely,

Ann W. Hauck, President

Attachments: maps, (natural resources/Collier County RLSA; Town of Big Cypress ; Roadway Network; FWS fraud - PEER press release; Florida Panther Protection Program MOU; GPRA Data Call for informal Consultations FY2004-2007; GPRA Data Call – National Totals FY2004-2006

The Florida panther represents what is left of an imperiled eco-system, a symbol of everything else that is going to disappear unless the federal government undertakes protective measures that work. High levels of environmental contaminants including mercury, PCBs and pesticide residues are being found in panthers in the Everglades . The most critical threat, however, is the continued erosion of habitat essential to the survival of the Florida panther. From 1987 to 2003, 3,212,370 acres of panther habitat were lost and yet the U.S. Fish and Wildlife Service have failed to designate Critical Habitat to protect the panther.

FWS SOUTH FLORIDA ECOLOGICAL SERVICES: A FAILED AGENCY

Points of concern are:

Management

- We request that you conduct an inquiry into the failed leadership of Mr. Sam Hamilton, Director, FWS R4, Atlanta , Ms. Cindy Dohner, Assistant Regional Director, and Mr. Paul Souza, Supervisor, South Florida Ecological Services, Vero Beach . Justification for this request will become evident in this report.
- We have been told by a person familiar with the situation that Ms. Dohner, is not supportive of protective activities for the panther: "...never went to the level of assessment that is needed to be done given the status of numbers and level of destruction." Allegedly Ms. Dohner has "made major efforts to discourage jeopardy decisions." Why is this person still holding her position as assistant regional director?
- Mr. Alan Webb, FWS, Vero Beach , is allegedly responsible for the destruction of old files deemed important by FWS biologists for the value of their historical perspective in writing biological opinions. Who directed Mr. Webb to do this or was he acting on his own?

Biological Opinions:

- "What good is the ESA if the principal federal enforcement agency is scared to death to use it?" (Jeff Ruch, Director, Public Employees for Environmental Responsibility). A FWS familiar with the situation told us that a jeopardy BO without "Reasonable and Prudent Alternatives" is sent to the "God Squad" for review and a decision to execute or not execute the proposed Federal action. In the history of the FWS less than ten Jeopardy Biological Opinions without RPAs have been written, and only one project was actually stopped, the Tellico Dam (snail darter) in Tennessee . (FWS source).
- Paul Souza's position is that they don't ever find jeopardy because the mitigation is so good. Of course, that flunks the basic math test because the mitigation is always preserving other habitat – i.e., you wipe out 1,000 acres but preserve 1,000. Of course, that means you've still lost 1,000 acres but preserve 1,000 acres. [They] view it as breaking even – like having a \$1 and spending 50 cents

and claiming you've still got \$1 because you "preserved 50 cents (Reporter: "St. Petersburg Times").

- Attachment #2 contains two files that were generated in compliance with GPRA, the Government Performance and Results Act of 1993. Note the difference between the number of consultations done per region, the number of jeopardy calls made, etc. This information makes a case that R4 may not be properly implementing the ESA. Florida has the third highest number of T&E species. Why is FWS-R4 not writing JBOs? Are they not warranted? Are there no T&E species in jeopardy? Is it the personal philosophy of R4 managers? Is it political interference? (Source: FWS).
- Lands that are *not* being managed for the panther are being counted in BOs (FWS source).
- The FWS has never issued a "jeopardy biological opinion" that would halt a development in panther habitat.* The FWS South Florida Ecological Services has issued 58 recommendations of denial and 15 incidental takings comments within the 1998-2001 [Programmatic Environmental Impact Study] time frame. Since 2000 the FWS has issued 20 biological opinions that have permitted major destruction of panther habitat. About 16,000 acres were destroyed or degraded in 11 of these projects. (Source: CCA FOIA request). Additionally, there were 112 formal consultations regarding Florida panthers between 1984 and 2007 where FWS found that Actions undertaken or authorized by other federal agencies "may affect" the Florida panther. (FWS Biological Opinion for Parklands Collier, Corps Application No. SAJ-2001-6580 (Oct. 2, 2007) at 31-32.
- In several Biological Opinions, FWS has relied upon an undisclosed "panther habitat assessment model to allow for destruction of panther habitat on private lands in exchange for "mitigation".

* ANY federal action that has the potential to impact federally listed specie such as the panther is subject to ESA review. That is the way the law reads but in the real world some federal agencies have disputed this and fought the FWS both successfully and unsuccessfully to reduce ESA oversight of their agency activities (national security issues have been invoked, as has efforts to "streamline" the ESA review process or even end ESA oversight – such as the order issued by the Bush Administration before it left office and immediately reversed by the Obama administration. The situation, in other words can be fluid at the national level, the regional level and between or even within agencies. (FWS source).

- Facing pressure from developers and Collier County leaders, FWS shrank the panther consultation area in December, 2007 by nearly 900,000 acres, an area roughly the size of Rhode Island. To facilitate consultations, FWS developed the so-called "Panther Key," as an interim tool to depict the Florida panther consultation area where the Corps of Engineers should assume that permits for

new development in wetlands “may affect” the Florida panther (Florida Panther Effect Determination Key, FWS (February 19, 2007). On the other hand, FWS would permit the Corps of Engineers to assume that projects outside this mapped area would not affect the panther. The Panther Key, as revised, is currently being used as the area in which consultation with FWS should take place under the ESA.

- The Scientific Review Team (SRT) analyzed 25 years and 3,000 pages of panther science and discovered “fatal flaws” in FWS models used to evaluate habitat use and predict extinction risk. Unsound methodologies, the SRT reported, had passed peer review unchallenged. (PloS Biology www.plosbiology.org, Sept. 2005/Vol. 3/issue 9/e333) Washington).

Political Interference

The U.S. Army Corps of Engineers (USACE) Jacksonville District Chief Regulatory Officer, Dr. John Hall (RET.) claimed in an e-mail that “the political pressure on FWS is evident to anyone who reads the records of their BO’s on the panther.” “In my opinion, they play politics themselves.”

- Why has the FWS allowed developers to partially write their own biological opinions to - speed things up - on whether their project would doom the Florida panther to extinction? (Source: Pittman, *St. Petersburg Times*).
- Andrew Eller, FWS field biologist was told to re-write the biological opinion for Winding Cypress which is located in the middle of a swamp at the headwaters of Rookery Bay National Estuarine Reserve. He was told to re-write the opinion with a “positive spin.” The developer – a major political donor – complained to his superior, “I was told to back off under threat of insubordination.” According to the biologist, “the compensation proposed was less than the formula used at that time.” (Source: Public Employees for Environmental Protection). In 2002, Eller began to accuse his agency of using flawed science and pressuring biologists to rewrite biological opinions to favor development. When he noted the trend that development was outpacing habitat protection by one and a half times, “they took that information out.” Eller was fired on trumped up charges (Attachment #3).

Legal

Based on the analysis of Kautz, et al., the Primary Zone, which supports the only breeding panther population, is “just enough space to support a population that is barely viable demographically as long as the habitat base remains stable. FWS has frequently taken the position that designation of critical habitat is unnecessary and counterproductive because other potential measures under the ESA are more beneficial to conservation of endangered and threatened species. The federal courts have rejected this rationale.

- The assumption that all public lands are being managed for the Florida panther is not true.
- The panther has been on the endangered specie list for 41 years without recovery. Placing a specie on the ES list does not necessarily protect a specie if you do not have the area designated for its critical habitat necessary for its continued existence. (Conservancy of SW Florida). Despite Congressional intent to require critical habitat designation, FWS has frequently used the limited exception by finding that designation is either not prudent or not determinable. Additionally, the FWS has typically put off doing so until forced to do so by court order. (“Petition to Designate Critical Habitat for the Endangered Florida Panther”) No critical habitat has been ever designated for the panther in Primary, Secondary and Dispersal Zones as approved in the FWS Florida Panther Recovery Plan. However, once a specie is listed on the ESA, the FWS and other federal agencies must take action to conserve the specie.

THE PICAYUNE STRAND BIOLOGICAL OPINION

[http://www.fws.gov/verobeach/images/biologicalopinion/20090312_letter Service%20to%20Corps_psrp%20bo.pdf](http://www.fws.gov/verobeach/images/biologicalopinion/20090312_letter_Service%20to%20Corps_psrp%20bo.pdf)

Service Federal Activity Code 41420-2008-FA-0018; Service Consultation 4120-20080112

At the very first meeting between the South Florida Water Management District (SFWMD) and the U.S. Fish and Wildlife Service, the District counsel, Ms. Joan Lawrence, made it clear that the District has no intention of biologically restoring the Everglades as a project priority: the purpose was to be a water management project typical of other Corps water projects (refer to USCOE Yellow Book and Hardesty Memo). The Picayune Strand Restoration Project (PSRP) is part of CERP. The SFWMD is the non-federal sponsor

The Project Plan

The PSRP BO does NOT specify whether the project is restoration of historic sheet flow which is measured in inches or a water storage project which is measured in feet. “Water Conservation Area” is another name for water storage area. Water storage is potentially the worst thing that could happen to Picayune Strand and specifics **should have been made clear up front.**

In a letter dated April 2, 2007, To Richard B. Cheney, President of the Senate, Ms. Rebecca Griffith of the Office of the Assistant Secretary (Civil Works) wrote that the alternatives considered combinations of pump station sizes and locations, adjustable weirs on some canals, widening canals and doing nothing to some canals. The Plan proposes to restore pre-drainage hydrology by back-filling 4 major canals, constructing 10 miles of tie-back levees, 2.5 miles of spreader wales and culverts to drain areas north of U.S. 41. The new levees [stated] purpose is to protect housing and agricultural areas

north of the designated area e.g., Golden Gate Estates. Drainage facilities tend to encourage land development (refer to CD “FWS FOIA: 1973000_report_Big Cypress Area of Critical State Concern, 1973). Of great concern among professionals is how the COE plans to operate pumps; it appears to be more for flood control than actual restoration. There are two pending water use permits: (1) Collier county surficial withdrawal and (2) City of Naples . Pre-litigation discussion on the canals are taking place. We are told that the canals are a good thing for restoration but pumps are not and the question is how are they going to be operated by the COE? Structures must not be built to throw water of the land north of Picayune Strand.

The debate over endangered species and critical habitat, including reversal of opinions, is evident to anyone who reads the 418-page Picayune Strand Biological Opinion. The FWS frequent use of “may effect but is not likely to adversely effect...“; “...will continue to evaluate the project level impacts” and “...reinitiating of consultation may be necessary” is worrisome. What good is reinitiating consultation after the proverbial horse is out of the barn?

Federally protected species in the project area are the indigo snake, Everglade snail kite, American crocodile, Western Manatee, Florida panther, bald eagle (even though it is off the ES list it is still protected), red cockaded woodpecker, wood stork and rare plants.

The PSRP BO states that construction work is not likely to jeopardize the continued existence of the Florida panther **even though the BO, pg. 97 states: “the project will result in the temporary loss of about 7,921 acres and the permanent loss and/or fragmentation of 264 acres of habitat which may adversely affect the panther by decreasing the spatial extent of lands available to the panther. “In addition, panthers may be periodically disturbed at [these] locations by construction of pumps, levees, power lines, spreader swales, a cell tower and elevated roads necessary to access pump infrastructure.” “Construction activity is expected to last at least 9 years.”** Other noted disturbances that are related to human presence are land clearing, heavy equipment operation, road traffic, noise and lighting associated with the project, hunting, hiking and biking, loss of prey from pesticide application, loss of prey from water level fluctuations, incidental taking in the form of harassment. Viewed cumulatively, all of these concerns cannot help but take a toll on threatened and endangered species.

- The project was sold to Congress as a simple restoration project but is now a panther mitigation bank for all of CERP for South Florida although it is not one acre better than in 1985.
- The South Florida Water Management built culverts under US 41 and plugged Prairie Canal in advance of Congressional approval.
- Picayune Strand is not physically part of the Everglades and justification relies heavily on ESA and TS. Species should NOT be monitored on a project-specific basis (not confined to area). Monitoring of each project should be folded into one.

- The Department of the Interior has contributed \$38 million in funding to the initial purchase of these lands by the State of Florida .
- The applicant could not assure that the project wouldn't be for stacking water rather than restoration of sheet flow.
- The project design continuously changes; regulators should be in control not the applicant.

Panther

- When was it decided to make Picayune Strand a mitigation project for CERP projects to the tune of almost a half million PHU credits (473,112). (Conservancy of SW Florida).? The FEIS for Picayune Strand has nothing in the document that says it is going to be a panther bank.
- The recently published Picayune Strand Biological Opinion should have been jeopardy BO for the [breeding] Florida Panther, West Indian Manatee critical habitat and wood stork. The USCOE 2000 Biological Assessment (BA) states the project may affect the panther, eastern indigo snake, red cockaded woodpecker and American Crocodile. The backfill of Prairie Canal may but not likely affect the panther, wood stork, Snail kite and manatee [and its critical habitat]
- FWS is managing for 90 panthers when they've already got 100-120 (Source: http://ecos.fws.gov/docs/recovery_plan/081218.pdf, 2007), including 15 females, yet they have calculated the acreage that will allow some of it for development and claim, on paper, that it does not harm (see "Calculations," below). Why not error on the side of the specie?
- There have been substantial re-writes for the panther in the BO.
- They were going to count the project 3 times for panther mitigation; now only 2 times.
- Vero Beach provides numbers used for calculations. The assumption for the calculations is based on "at risk" land that the public does not own. Who made the decision to use land that the public doesn't own?

Manatee:

The PSRP "Summary of Informal Consultations, West Indian Manatee and West Indian Manatee Critical Habitat" pg. 11, says that..."due to the manatee's unusual physiology, including an extremely low metabolic rate and a high thermal conductance, limits its ability to thermo regulate in cold waters and makes it susceptible to cold-related stress and death. Manatees are unable to tolerate prolonged exposure to temperatures below about 61 degrees F" and pg. 14, "adverse effects for the manatee may be: (1) potential failure of the thermocline/halocline that supports the warm-water refugium of the POI basin resulting in cold stress and/or mortality, including potential hydrological effects in the upper estuaries of

the Ten Thousand Island NWR and (2) an increase in exposure to boat traffic associated with access to new freshwater sources and forage opportunity.” pg 12: “For adults, watercraft-related mortality is still the leading single cause of death, although red-tide mortality is a close second.”

Calculations:

- **Risk vs. Secured Lands.** The “needed” lands in the BO are based on: (1) no risk/secured (public) and (2) at-risk (private). If you assume private lands are available for the panther conservation, – about 70% but more if including land north of the Caloosahatchee River - then “mitigation” needed for every development is less. At risk/private land used by panthers could be developed as shown in the high density proposal of the Florida Panther Protection Program MOU.
- **Averages.** The Service chose to plan for a protection acreage for 90 cats based on the 90-100 cats that the genetic analysis said was necessary to sustain a viable population for a certain time period Therefore the target acreage which is the basis for all of the other calculations for mitigation, etc., is based on an average acreage need for 90 cats needed to meet a genetic threshold and NOT the 100-120 cats that are actually existing today. Who made the decision to base calculations on 90 cats vs. 100? An average reduces expectations of needed conservation lands.
- Refer to the 100-year Populations Viability Analysis; PSRP Assessment and Randy Kautz’s information in the BO which tells how to get to the 1-31923 average.
- USFWS is basing its decision on data from that same study which says if you’ve got a population of 90-100 it will be stable for a while – although eventually it will start showing the exact same genetic problems as before the Texas cougars were introduced in 1995. The Kautz study includes one big caveat. It says this will work ONLY if there’s no further loss of habitat in the Primary Zone. Of course there have been lots of losses since the study came out.

THE FLORIDA PANTHER PROTECTION PROGRAM

Participants

The Florida Panther Protection Program (FPPP) is a Memorandum of Understanding agreement of eight major landowners (Alico Land Development Corporation, Baron Collier Partnership, Collier Enterprises, Consolidated Citrus LP, English Brothers, Half Circle L Ranch Partnership, Pacific Tomato Growers Ltd., and Sunniland Family Limited Partnership) and three conservation groups (Audubon, Florida Wildlife Federation, and Tampa-based Defenders of Wildlife).

Although the Florida Wildlife Federation writes in the MOU “it is the exclusive state affiliate of the National Wildlife Federation” it is noted that the National Wildlife Federation and the 6000- member Conservancy of Southwest Florida have withdrawn support and declined to sign the Memorandum of Agreement. The Sierra Club, which was purposely excluded from the negotiation, does not support the proposed plan.

The FPPP stated mission is to protect panther habitat while preserving agricultural lands and identifying appropriate areas for development in eastern Collier County . While the Parties claim their intent is to secure a contiguous range of panther habitat connecting major public lands in the region that includes and surrounds Collier County’s Rural Lands Stewardship Area, (RLSA), important stakeholders and landowners within the RLSA were not included in this back room formulated plan, and without the participation of all stakeholders through the public process, the policies outlined within the document, if approved by the applicable governmental agencies, would impact all RLSA landowners and many other key stakeholders.

Foremost among our concerns is how this program, based on assumptions and vagaries rather than the best available science may work itself up the chain of federal regulatory agencies’ agreement after receiving local and regional government approval. In other words, as currently formatted, the program appears vulnerable to “deal making” for the benefit of stakeholders rather than for the benefit of the panther and other endangered species. As previously noted,” The Service is subject to political interference. This becomes obvious to anyone who looks at their jeopardy opinions.” (John Hall).

Collier County Rural Lands Stewardship Area Overlay

The RLSA was established for the purpose of encouraging smart growth patterns within a rural landscape covering 195,846 acres in Eastern Collier County . The RLSA program provides a system of compensation to private property owners for the removal of certain land uses in order to protect natural resources and viable agriculture in exchange for transferable credits that can be used to entitle compact development. The Program allows for any land within the RLSA to be designated as a Stewardship Sending Area (SSA).

Credits are generated from SSAs in return for maintaining the areas in permanent agriculture, open space or conservation uses. Stewardship Credits may be used to entitle a Stewardship Receiving Area (SRA) which can be in the form of self-contained planned urban developments within the RLSA. The SSA Program within the RLSA establishes a method for protecting and conserving the most valuable environmental land including large, connected wetland systems and significant areas of habitat for listed species, while directing compact developments to the least environmentally sensitive areas of the RLSA. The Natural Resource Index (NRI) ranked lands within the RLSA according to value for wetlands protection, water resource protection and management and wildlife habitat conservation. The results of the analysis of the NRI ranked lands (See Map) are in five categories: Flow-way Stewardship Area; Habitat Stewardship Area; Water Retention Area and Open Land (open lands are privately owned lands not otherwise classified as FSA, HSA or WRA).

The FPPP would disconnect credits from natural resource values in a new, large “agricultural preservation areas,” such as to allow developers to attain development credits for preserving agriculture in non-sensitive areas (such as outside the primary panther zone) in exchange for developing sensitive areas (such as primary panther zone). This violates the underlying balance of the program in preserving agricultural AND environmentally sensitive areas by providing incentives for development to occur in less sensitive areas. The landowners would like to see – including SSAs that were already set aside – to bank the extra PHUs and sell them for projects inside and outside of the RLSA. The Panther Review Team report warns against this provision.

“Paul Marinelli Panther Protection Fund”ing

The involved Parties have proposed establishment of the Paul Marinelli Panther Protection Fund (ironically named for Paul Marinelli, the former late president of Barron Collier Corp., who developed the Town of Ave Maria in the Western Everglades in primary panther habitat). This fund would collect mitigation monies based on panther habitat units and SRAs, to be held by the Wildlife Foundation of Florida, Inc., which would be governed by a board of directors consisting of selected representatives of the MOU Parties, USFWS and Florida Wildlife Commission. **While federal participation may look good on paper the FWS should not agree to participate or accept any position on a public foundation board dominated by the regulated public and especially to the exclusion of other stakeholders, independent scientific oversight and public participation.**

The fund is essentially being used in lieu of avoidance for future development (to focus their development outside the primary panther zone). Again, this violates avoidance and minimization prior to mitigation, as well as the Recovery Plan which states that “conservation efforts should focus on preserving the total available area, quality and spatial extent of the primary zone.”

According to the Draft Panther Review Team Final Report, the “fund” has the potential to generate in excess of \$150 million through 2050 with revenues deriving from use or sale of Panther Habitat Units generated from Stewardship Sending Areas (SSAs) and voluntary donations. The Parties generally proposed to deposit funds into the Panther Fund at a rate of \$75 per Panther Habitat Unit associated with their respective use or sale as mitigation for project impacts. Those PHUs may be used as mitigation for project impacts within; or outside the RLSA Deposit of that amount would be made at time of transfer or sale of a PHU to a third party to satisfy mitigation. The fund would be used to underwrite costs associated with under-funded panther habitat restoration and Management activities within the region.

There are limited specifics regarding the funding mechanism but it appears to provide sufficient incentive to engage some environmental organizations – the proverbial carrot to entice their support. Some but not all BOD members of the Wildlife Foundation of Florida are:

- John Rood, Founder, Chair and CEO, Vestcor Companies. Business: Land subdividers and developers, Jacksonville , Florida . The Google web site says he is a recipient of millions of taxpayers' dollars during the Delaney years. Finance Chair, Republican Party of Florida . Member, George Bush Pioneer Club.
- Joe Martin Hilliard, farmer, Clewiston. 40 companies are listed at given address, including Caloosahatchee River Development, LLC, Clewiston Estates and Land Co., Sugar Cane Harvesting and Sugarland Harvesting
- David K. Meehan, Vice Chair, First Community Bank, Pinellas Park . Business: Banks Insurance Co.
- Thomas B, Kibler, Vice Chair of Wildlife Foundation of Florida .
- Myakka. Business: Real Estate Broker and Sales
- Daphne Wood, Chair, Wildlife Foundation of Florida, Inc. Spouse of private investment firm owner.

Development Credits

Mitigation banking for loss of panther habitat has all the earmarks of money making proposition similar to wetland mitigation banking. Since the Picayune Strand Restoration Project is proposed as a mitigation bank for all of CERP in South Florida would the FPPP stakeholder lands be eligible for mitigation program in Picayune Strand?

- Collier County Program, the RLSA currently allows for more development “credits” than was expected in rural Eastern Collier County . Instead of less than 20,000 acres of new towns and villages allowed, it now acknowledges that 43,000 acres of intensive development is authorized.
- However, developers now want increase the existing amount of “credits” by 30 percent but say they “only” want to build on 45,000 acres [of high impact development]. A 30% increase would allow far more than 45,000 acres to be destroyed; a 3% increase would give them that much. With only 43,000 acres of land designated as Open for development and that is outside the primary panther zone, any amount over that (such as 45,000 acres) would necessitate the destruction of primary zone habitat and thus threaten the extinction of the Florida panther.
- It is essential that the FWS designate critical habitat immediately based on the best available science and the recently released Florida panther recovery plan.

Unacceptable Concerns in the MOU

We question the *intent* of the program based on findings in the Memorandum of Understanding:

- The developers do not specify precisely where the development footprints will occur.
- The Florida Panther Protection Program establishes 45,000 acres of development in the Rural Lands Stewardship Area but fails to provide exact location of

development to enable determination of how much mitigation is needed to offset such impacts.

It is only to be administered by signatories.

- The MOU will be a binding agreement contingent upon several things including a FWS Agreement allowing for the Maximum Development Footprint, issuance of a biological opinion; and assurances that **"no further land use restrictions, extractions, minimizations, conservation measures, reasonable prudent measures or compensation will thereafter be required for the Maximum Amount of Development."** Language will be added to state: "with respect to the panther and consistent with the FWS Agreement."
- There is a non-binding agreement not to challenge any local, State or federal permits for projects that meet the criteria of the MOU for Panther protection, on other grounds such as wetlands. **This is an alarm bell for us. The RLSA includes approximately 71,000 acres of wetlands and many of the projects that are being proposed are likely to impact wetlands under federal jurisdiction. Eastern Collier County has been identified as part of an imperiled ecosystem due to an 88% loss between 1900 and 1989 (Noss and Peters, 1995). The wetland type found in SW Florida, hydric pine flatwoods support 31 mammals, 139 birds, 40 reptiles, 17 amphibians and 22 fish species, including 10 federally listed species. Two hundred and seventy-four migratory bird species occur in Southwest Florida ; 175 of these are found in aquatic habitats. Of the 992 plant species found in hydric pine flatwoods, 98 species are state listed (Source: Beever and Dryden, 1994). The process of defining essential habitat areas within the Rural Land Stewardship Area should not be limited to single specie.**
- **Landowners stated that they would work amongst themselves to determine the appropriate mechanism to use for the FWS agreement then come back to the entire group to work with all parties on how to move forward. This provides no assurances that concerns of the environmental organizations will be met for preservation, and, importantly, no guarantee of public involvement or independent scientific review.**
- The proposed Town of Big Cypress DRI will impact 3,411 acres of primary panther habitat. It is exempted from review without analysis of its outstanding natural resource value for the Florida panther or other listed species and was apparently "grand fathered" from the analysis based on its current permitting applications.
- The MOU allows villages outside the Area of Critical State Concern to increase in size from the current 1,000 acre maximum to 1,500 acres. Anything over 1,000 acres should continue to be handled as towns which have additional requirement for infrastructure and amenities.

Infrastructure Proposal

The final MOU states that the Core Transportation Network Map is a conceptual proposal supported by the rural landowners, and **includes an alternative Interstate 75 interchange and a SR 29 bypass which will become a magnet for development. The PRT report talks about concerns with the SR 29 Bypass alignment as proposed by the landowners (pg. 54). Additionally, the landowners propose the establishment of a road system sufficient to support 45,000 acres of development.**

Habitat loss due to fragmentation including infrastructure is the greatest threat to panther survival. **“The Florida panther mortality database through October 13, 2008, contains 122 records of road killed panthers range wide and 29 of these records (26%) have occurred within the Rural Lands Stewardship Area.”** (Source: Florida Wildlife Commission: panther_mortality_and_injury_list_13oct2008.xls (88.7KB). Note: this differs from USCOE “Status of the Species,” Pg. 51 quote of 113 panthers killed or injured.)

Tamiami Trail (I-75) culverts project are planned. Are these culverts intended for flood control of eastern Collier lands?

Additionally, because female panthers generally do not establish home ranges in areas containing highways, they are not likely to use underpasses. Thus, female panther habitat remains fragmented even in areas where underpasses have been constructed. The second great cause of death is 49 cases of intraspecific aggression which is becoming increasingly prevalent because of shrinking habitat. In addition to a direct loss and fragmentation of habitat, constructing new and expanding existing highways may increase traffic volume and impede panther movement within and between frequently used habitat blocks through the landscape (Swanson et al, 2005).