

The Council of Civic Associations, Inc.

24910 Goldcrest Drive
Bonita Springs, Florida 34134
February 25 2011

The Honorable Kenneth Salazar
Secretary, Department of Interior
U.S. Dept of Interior
18th and C Street, N.W.
Washington, D.C. 20240

Dear Secretary Salazar:

On your January 19, 2011, visit to the Everglades Coalition meeting you announced a new Everglades Headwaters National Wildlife Refuge aimed at preserving water resources and wildlife habitats. Thank you for your attention to our rapidly-growing state's urgent environmental challenges. Urban sprawl and development have brought remaining natural ecosystems to the brink of destruction, and critically endangered wildlife such as the Florida panther, one of the species whose plight the proposed national wildlife refuge is intended to improve, is on the cusp of losing their last chance for recovery.

Please know, however, that while we support the creation of this national wildlife refuge to enhance long term conservation, it will do little to save the Florida panther whose immediate future is at stake. That is, in part, because the proposed refuge lands provide lower habitat values than other habitats identified by scientists and the 2008 Florida panther recovery plan as urgent priorities for protection. Furthermore, it appears likely that some of the refuge lands would be the same lands that have already received protection as a form of mitigation for development projects that destroyed vital habitat; taxpayers would pay a second time to achieve the same protection that was already "purchased" during the development approval process. Finally we remain very concerned, as stated in part in the Council of Civic Associations, Inc.'s letter of November 14, 2009 (for which we still await a reply), that other needed actions that the Department of Interior refuses to undertake would be far more timely, cost-effective and would conserve habitats that are far more urgent priorities for protection. This letter is to once again request the Fish and Wildlife Service begin using its conservation authorities under the Endangered Species Act, including designation of

critical habitat, to conserve the lands that will make a difference in the short-term for the panther, so that the longer term conservation values that the proposed refuge would cultivate might still have meaning.

As one example of lost opportunities, we wish to remind you that the Service has not issued a single Jeopardy Biological Opinion for the entire Southeastern United States since 1993 even as development has resulted in more panthers dying on roadways. This stunning failure to assess the cumulative impacts of development has resulted in squandering most of the time-limited benefits caused by the 1990s introduction of pumas from Texas to broaden the Florida panther's gene pool and has dangerously narrowed the crucial wildlife movement corridor that represents the sole remaining hope for eventual panther recovery as defined in the recovery plan.

The Service now appears poised to repeat the disastrous course in approving pending requests for incidental Take Permits such as for the Florida Panther Protection Program (FPPP) and Habitat Conservation Plan (HCP).¹ Instead, the Service should reverse course and settle the ongoing litigation over critical habitat designation for the Florida panther with an agreement to expeditiously designate critical habitat. Critical habitat designation would raise the threshold of review of new development project affecting the habitat, and would insulate decisions on habitat protection and the large sums of money potentially at stake from short-sighted political considerations. Only critical habitat projection would provide the necessary regulatory tools to ensure Florida panther recovery and uphold the public interest in ecosystem conservation, both goals of the Endangered Species Act.

We would like to discuss with you these and other outstanding issues regarding the Florida panther (see attachment). We thereby respectfully request a meeting with you and/or deputy secretary David Hayes at your earliest convenience to include the parties to the present Florida panther critical habitat litigation: the Conservancy of Southwest

1. Based on documents obtained under the Freedom of Information Act, it appears that the Service intends to issue PHUs under the Proposal Panther Protection Plan and has begun to develop a methodology for calculating how much panther mitigation credits ("Panther Habitat Units") could be "banked" from these already protected areas while allowing development in areas that the panthers desperately need for protection – thereby perpetuating the ongoing environmental havoc occurring in the Western Everglades and creating a new policy to enable such misguided and unnecessary double-dipping into the federal treasury.

Florida, the Council of Civic Associations, the National Sierra Club, Public Employees for Environmental Responsibility and Center for Biological Diversity.

Thank you for your kind attention. We look forward to hearing from you.

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cc: Mr. Gary Guzy, Deputy Director and General Counsel, Council on Quality
President Barak Obama
Mr. Rowan Gould, Acting Director, USFWS
Mr. David J. Hayes, Deputy Secretary, DOI
Mr. Will Shafroth, Deputy Assistant Secretary, FWS
Ms. Cynthia Dohner, Regional Director, R4, FWS
Mr. Paul Souza, FWS South Florida Ecological Services

Enclosures: (4)

1. Compensation Acreage and Panther Units 2003-2008
2. List of Federal Endangered Species in Collier County
3. USACE Flowway maps for South Florida
4. Wilson-Miller Conceptual build-out map

INDEX:

HCP: Habitat Conservation Plan. HCPs are agreements that allow for incidental take of endangered species in exchange for a mitigation package. As with the Florida Panther Protection Program, private landowners have developed an HCP to manage endangered species on their property as compensation for impacts to wildlife and their habitats.

FPPP: Florida Panther Protection Program, a proposal by a coalition of some environmental organizations, property owners in Collier County and real estate developers to preserve Florida Panther “corridors” in exchange for unviably narrow corridors of 600 feet wide and additional mitigation, the proposal will allow 45,000 acres of residential/commercial development in rural Collier County as well as over 100 square miles of new or expanded roadways.

Trapped PHUs: One element of the FPPP proposes to allow landowners to bank panther mitigation credits from lands that are already eased (**protected**) or would be eased under Collier County’s RLSA program. The FWS policy has been to not allow mitigation credits to be awarded from lands that were already protected from further development. A change in this policy could have wide-ranging affects and could denigrate the value of all preserved lands.

RLSA and SSA: Rural Land Stewardship Area is Collier County’s local land use program that aims to protect and conserve the most valuable environmental land including large connected wetlands. The purpose is to encourage smart growth patterns in rural areas of the County per the Growth Management Plan. Stewardship Sending Areas (SSA) are placed under easement and Sending Area Stewardship credits are issued to property owners which may be used to entitle Stewardship Receiving Areas (SRA) is used to issue designated Sending Area Stewardship credits to property owners which may be used to entitle Stewardship Receiving Areas (SRA) which can be in the form of self-contained, planned developments in 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.

TOBC: The Town of Big Cypress is a plan of approximately 9,000 homes on 3,700 acres in rural Collier County, east of Naples It is not permitted yet and authorization under the Endangered Species Act is proposed under the HCP. It is located on the critical regional flowway that supports the Florida anther National Wildlife Refuge system and is essential panther habitat.

FWS E-MAIL CORRESPONDENCE OBTAINED THROUGH FOIA #2: “Subject: Refuge Staff meeting with Collier-Enterprise, 2/21/2007, from Layne Hamilton, Refuge Manager, Florida Panther and Ten Thousand Islands NWR to Brad Rieck/R4/FWS/DOI.

Staff Hydrology Concerns: “The primary concern the refuge has is the hydrological effect that this development will have on the refuge and other public lands in the area, including the Picayune Restoration project.” “The refuge and surrounding areas are already degraded due to decades of drainage. On the refuge our vegetation communities have been drastically altered, especially our wet prairies and hydric pine flatwoods. We have a horrible problem with invasion of cabbage palms in these areas. We are spending over \$250,000 mechanically removing cabbage palms from nearly 2,000 areas of prairies and pine flatwoods. We have thousands of more acres that have been impacted by the cabbage palms invasions. **If the new town adversely affects the ground and surface water, we will be looking at even more drastic impacts to our vegetation. We know that the cabbage palm invasion has impacted our white-tail deer, and consequently the panther. Any drainage**

would continue to degrade deer and panther habitat. Additionally, the refuge has many species of extremely rare Orchids that depend on permanent water sources in the cypress areas during extreme cold to ameliorate the temperature. Further drops in water levels, especially in the winter will probably wipe out these state listed species, not just on the refuge but on the adjacent Fakahatchee Strand.”(Emphasis added).

“FWS [name omitted] concerns were that the proposed development was never modeled during the planning for the Picayune Strand Restoration Project. FWS [identity omitted] has great concerns about the changes in hydrology that will occur with the water use associated with residential, commercial and golf course development will do to the local aquifer, especially when you realize that Golden Gate Estates is going to be built out with over 100,000 residents by 2016 (all on wells) and Ave Marie will be sucking water for its university, residents, golf course, etc. How do we evaluate the hydrological impacts on the panther, the Picayune Strand Restoration, etc.?” “We have to have this information.” *ibid.*

OUR RESPONSE:

- Over a decade ago, Mr. Richard Pettigrew, former Audubon Florida chair and former state legislative leader became Chairman of the Governor’s Commission for a Sustainable South Florida. At that time he said that what had already permitted by the South Florida Water Management District was not sustainable.
- Mr. Henry La Rose, former USGS supervisor for 35 years wrote [for the year 2000 Southwest Florida Environmental Impact Statement]: “Dangerous cones of

depression over vast areas are spreading in Lee and Collier counties, including continue on the present course.” The Town of Big Cypress is proposing to draw all the way from the Lower Tamiami and Lower Hawthorn aquifers!

- One of the most difficult, yet technically critical information elements that is not getting a full accounting in the science to date is the extent wetlands drainage, reduction of hydro period and fragmentation of habitat has on the sustainability of water dependent populations of federally listed and candidate species in the proposed Collier Enterprises’ development area including the Florida panther, the black bear, red cockaded woodpecker, snail kite, nesting wood stork and Eastern Indigo snake. 175 of the two hundred and seventy-four migratory bird species that occur in South Florida

are found in aquatic habitats. Of the 992 plant species found, 98 species are state listed.

- Collier County has a very porous aquifer providing primary water supply which creates a “drought or drown” condition of annual water restrictions and first to flood conditions often in the same calendar year. As indicated in PRT comments, this region is also the most rapidly developing area of land that has a high percentage of wetland coverage. The wetland conversion, off site mitigation and the existing rules guiding development, (pre must equal post drainage is a spiraling and cumulative nightmare since pre is determined by the last development to be approved upstream), have the effect of compounding flooding potential and seriously impacting the entire Southwest Florida marine-estuarine environment by reducing water quality and creating serious hydro period impacts.

FWS E-MAIL CORRESPONDENCE OBTAINED THROUGH FOIA (#2): AS BEFORE

“[We] discussed impacts on the refuge from the town including smoke management concerns and hydrological impacts. There are no regulations that prevent us from putting smoke on a residential area, but we know that the residents will not like it. We potentially will smoke out the entire town, from south to north, on a good south wind.”

Collier-Enterprise has offered to put covenants in their deed that will prevent residents from complaining about the smoke.” FWS “strongly suggested they consider [identity withheld] suggestion or else they would be most likely looking at a jeopardy opinion. Her suggestion included pushing the development up to Oil Well Road and north...” “The impact to the refuge and most importantly, to the panther, will be too great to allow any development in the southern portion of the project area.”

OUR RESPONSE

The Collier Enterprises “solution” to address their poor site location with deed covenants may be an indicator of blatant disregard for human, health, safety and welfare; a tactic that is an affront to democratic values and an indicator of for-profit greed. Clear-cutting and disposal of burn trees and other plant material produces smoke that is a mixture of gases and fine particles and can hurt your eyes, irritate your respiratory system and worsen chronic heart and lung disease. To preserve the Panther Refuge’s ability to appropriately manage its lands, continue the *necessary* prescribed

burns and maintain critical panther habitat, the site location of The Town of Big Cypress – and any other proposed RLSA development that poses adverse risks to Collier County’s natural resources – needs to be moved. The TOBC is not yet permitted and is under review by the FWS and Army Corps of Engineers. We support FWS Refuge staff, the Conservancy of Southwest Florida recommendation that the site footprint be moved out of Primary Zone panther habitat. To read more on related strong-arm tactics of developer-interests re: covenants read “Ave

Maria – A town Without a Vote: Now and forever” which can be found on <http://www.naplesnews.com/news/2009/may/09/town-without-vote-now-and-forever/>

Florida Panther Protection Program and Habitat Conservation Plan:

FWS E-MAIL CORRESPONDENCE OBTAINED THROUGH FOIA #1: dated 4/28/2008 from Paul Souza, Field Supervisor, South Florida Ecological Services, FWS/R4 to Jeff Weller; cc: Aaron Valenta. et al.

Souza: “Folks, I think we have enough to pull something together. There is no clear answer, **but every one seems to feel more attracted to the conservation agreement. I think we should make that recommendation**, but also be flexible enough to take a different course if it proved to be more fruitful. The bottom line for me is that we stand at a moment in time with this possibility of panther conservation, and we should find a way to make it happen legally and in all the detail that is needed. I wouldn’t want process to be the reason this effort did not succeed.” (Emphasis added).

OUR RESPONSE:

- What conservation is Mr. Souza talking about? Agency approval for these impacts to endangered species is proposed through Section 10 of the Endangered Species Act. This results in a Habitat Conservation Plan and
- Incidental take (harm and harass) permit. As proposed, the FPPP permit will allow unquantified take of 10 different species over the next 50 years of build-out in a currently rural area of Collier County. (See map below, Attachment A). However, this area of Collier County contains nearly 200,000 acres of Florida panther habitat and is critical to the survival of the species.
- The Florida Panther Protection Program Technical Review Team (PRT), composed of six panther biologists, is very critical of nearly every component of the proposed FPPP, particularly the banking of the trapped PHUs which they call “detrimental to panther conservation.” The PRT’s review of proposed Florida Panther Protection Program (FPPP) is available at <http://media.naplesnews.com/media/static/Panther-Review-Report.pdf>
- The application proposes a myriad of additional impacts beyond the 4,000 acres of development including expanded agricultural practices, transportation networks, oil and gas exploration, mining, etc... The FPPP falsely assures that the remaining acres will be protected since the HCP, as well as the local land use programs are 100% voluntary.
- “Collier County’s local land use programs allow for ranchette-style developments outside of new towns, so development made possible under the FPPP HCP will only add to premature conversion of essential panther habitat.
- The current FWS Panther Habitat Units (PHU) calculator permits development of essential panther habitat in return for some panther habitat protection. The ratio of primary lands lost/preserve is 1.92. However, even the desired ratio is inadequate – does not meet the 3-1 ratio *biologists* consider necessary to stabilize the lands currently used by the panther. Habitat quality rather than quantity places undue importance on

forested habitat when ALL *panthers use every habitat type*. Panthers, a wide-ranging species requiring 200 sq. miles of habitat utilize both forested canopy and open range.

- The PHU is designed to protect sufficient acreage of Primary Zone lands to support 90 panthers. The Service is now saying there are 160 panthers in the wild so...no problems? However, based on the analysis of Kautz, et al, 2006, the Primary Zone – the highest value panther habitat – 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.”
- The FWS revised panther key shrank the panther consultation area in December, 2007, from 4,717,150 to 3,827,252 acres for a difference of 889,907 acres. That means that typically they would not require consultation with the Service in areas outside of the consultation area. The proposed FPPP HCP will further erode this balance of panther compensation due to the change in existing FWS policy that will allow landowners to bank “trapped” PHUs from already-eased lands.
- The HCP also does not properly avoid and minimize impacts to panther habitat since, as proposed, development is not being directed away from the highest-priority Primary Zone habitat.

-- Florida Panther Protection Program Review Team (PRT) Final Report, dated October 15, 2010.

Pg. 29: The PRT report identifies 33,224 acres of Secondary Zone habitat where development impacts should be directed. As the HCP is currently proposed, development can go anywhere as long as a few additional mitigation dollars are offered. This does not meet established regulations that severity and amount of impacts should be minimized prior to accepting of mitigation compensation. “...impacts to the Primary Zone is likely to occur if the maximum allowable acreage of future development allowable under the cap is eventually reached. Therefore, the PRT recommends that future development occurs first in Open Lands that are within the Secondary Zone before lands that are within the Primary Zone are considered for conversion to urban uses.”

Pg. 37: “A greater acreage of impact in the Primary Zone results in a greater number of PHUs of additional mitigation credit, a greater number of acres of panther habitat protected, and a higher contribution to the Panther Fund...” **However, the unsettling and perhaps counter-productive aspect of this conclusion is that greater benefit would accrue as a consequence of greater impacts to the Primary Zone, an area that has been described as essential to the survival of the Florida panther.**” The FPPP is based on mitigation, not avoidance and minimization to endangered species habitats. We agree with the PRT that this is a trouble aspect of the FPPP. Therefore the HCP should not be approved as proposed.

Pg. 46: “The PRT’s analysis of the PHU value of SSAs shows that less mitigation acreage is required by the FWS Methodology when compared to acres required by the RLSA credit system. The net result is that landowners of SSAs would be able to bank approximately 420,000 PHUs that would be available for sale to developers outside of the RLSA. These PHU’s are sufficient to mitigate the development impacts to approximately 20,600 acres of Primary Zone or 53,400

acres of Secondary Zone habitat outside of the RLSA. The PRT cautions that using unused PHUs generated from designated Stewardship areas to mitigate for panther habitat loss outside of the RLSA would be detrimental to panther conservation.” The biologists’ review revealed that the Florida Panther Protection Program would not provide any additional habitat acquisition than the existing local land use program (Collier County’s RLSA program). As such, there will be no net benefit from this proposal, only a net loss due to the amount of development and use of trapped PHUs to ‘fund’ tens of thousands of impacts outside of the RLSA.

Pg. 75: “The PRT concludes that preserving existing panther habitat is far more valuable than generating funds or providing more mitigation for impacts to the Primary Zone.”

“Conceptual Build-Out” map by consultants representing FPPP HCP landowners
Red dots = new towns or developments
Yellow, green and red roads = new or expanded roadways
Green overlay = lands already slated for protection under the existing Collier County local land use program