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## PACIFIC LEGAL FOUNDATION

May 27, 2009

The Honorable Ken Salazar  
Secretary of the Interior  
United States Department of the Interior  
1849 C Street NW  
Washington, DC 20240

**VIA FEDERAL EXPRESS**

Mr. Rowan Gould  
Acting Director, U.S. Fish and Wildlife Service  
United States Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Mr. Sam D. Hamilton  
Regional Director, Southeast Region  
United States Fish and Wildlife Service  
1875 Century Boulevard NE  
Suite 400  
Atlanta, GA 30345

Re: Petition of the Florida Home Builders Association to Reclassify  
the Wood Stork Under the Endangered Species Act

Dear Messrs. Salazar, Gould, and Hamilton:

Please find enclosed Petition of the Florida Home Builders Association to Reclassify the Wood Stork under the Endangered Species Act.

Thank you for your attention.

Sincerely,

STEVEN GEOFFREY GIESELER  
Attorney

Enc.

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**BEFORE THE UNITED STATES DEPARTMENT OF THE INTERIOR &  
THE UNITED STATES FISH AND WILDLIFE SERVICE**

In the Matter of the Florida )  
Home Builders Association's )  
Petition to Reclassify the )  
Wood Stork Under the )  
Endangered Species Act )

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**PETITION OF THE FLORIDA HOME BUILDERS ASSOCIATION  
TO RECLASSIFY THE WOOD STORK UNDER THE  
ENDANGERED SPECIES ACT**

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## INTRODUCTION

Petitioner FLORIDA HOME BUILDERS ASSOCIATION (FHBA), pursuant to Section 4(b)(3) of the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., hereby petitions the United States Department of the Interior (Department), and the United States Fish and Wildlife Service (USFWS), to reclassify from endangered to threatened the Southeastern population of the wood stork (*Mycteria americana*). This Petition requests that the Department and USFWS effect the reclassification as recommended by the USFWS five-year review of the wood stork, completed and signed on September 21, 2007. A copy of the five-year review is attached to this Petition, and is incorporated into the Petition by this reference.

Petitioner FHBA, established in 1949, currently has approximately 19,000 corporate members located throughout the State of Florida. FHBA members employ hundreds of thousands of workers who produce tens of billions of dollars in annual economic impact, making construction Florida's second-largest industry. FHBA members operate businesses in areas inhabited by the wood stork; restrictions placed on construction, permitting, and land and water use due to the wood stork's outdated classification as endangered have significant impacts on FHBA members' abilities to sustain their livelihoods, and to continue to enjoy on private property Florida's wildlife and natural environment.

## BACKGROUND

The wood stork originally was listed as endangered under the ESA in 1984. 49 Fed. Reg. 7332 (1984). USFWS conducted a five-year review of the species in 1991. 56 Fed. Reg. 56882 (1991). After more than a decade without a subsequent review, the Department and USFWS were ordered by a federal court to complete a five-year review of the wood stork, and of nearly 100

other Florida species overdue for review, pursuant to a lawsuit brought by FHBA. *Florida Home Builders Ass'n v. Norton*, 496 F. Supp. 2d 1330 (M.D. Fla 2007).

The wood stork review was completed in September, 2007. The recommendation resulting from the review's survey of the best available scientific information was to reclassify the wood stork from endangered to threatened, with a reclassification priority number of 4. Wood Stork Five-Year Review at 22. In the more than nineteen months since this recommendation to reclassify, neither the Department nor USFWS has taken any action to reclassify the wood stork.

### ANALYSIS

A comprehensive analysis of the best scientific data supporting the reclassification of the wood stork in this Petition would be redundant, as USFWS undertook this analysis in the attached 2007 five-year review. In summary, however, the review included the detailed analysis of the five criteria to be considered in reclassifying a species, as mandated by Section 4(c)(2) of the ESA. 16 U.S.C. § 1533(c)(2)(B)(ii)-(iii).

A synopsis of the five-year review's conclusions as to the five statutory factors is as follows:

1. **Present or threatened destruction, modification, or curtailment of its current habitat or range:** Although wetland loss, fragmentation, and modification continue as threats to wood storks, the significance of the threat could not be quantified and appeared to be reduced. The breeding range of the species has almost doubled in extent and shifted northward, so the dependence on any specific wetland complex (such as the Everglades) also is reduced. The 59.6% increase in the number of breeding pairs of wood storks (1982 -1984 to 2004 - 2006) further indicates that wetland habitat is not yet limiting the population at the landscape level.
2. **Overutilization for commercial, recreational, scientific, or educational purposes:** This factor is not considered a concern for the recovery of the wood stork.

3. **Disease or predation:** This factor is not considered a concern for the recovery of the wood stork at this time.
4. **Inadequacy of existing regulatory mechanisms:** Recent trends in range expansion and population increase suggest that existing Federal and State regulations are adequate to protect and conserve the wood stork.
5. **Other natural or manmade factors affecting its continued existence:** Contaminants, harmful algal blooms, electrocution, road kill, invasion of exotic plants and animals, disturbance, and stochastic events are all documented to affect wood storks, but not to a degree to impede recovery.

### CONCLUSION

The federal government's five-year review, based on its own analysis of the best available scientific information, is unambiguous in recommending that the wood stork be reclassified from endangered to threatened. There appears to be no valid scientific reason for this reclassification to be delayed any further than the nineteen months it already has remained unexecuted. Therefore, the Florida Home Builders Association hereby petitions the Department and USFWS, pursuant to Section 4(b)(3) of the Endangered Species Act, to reclassify the wood stork from endangered to threatened.

DATED: May 27, 2009.

  
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