

# Eastern Collier Property Owners

July 28, 2022

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## Via U.S. Mail and Email

Mr. Larry Williams  
State Supervisor  
Florida Ecological Services Office  
U.S. Fish and Wildlife Service  
1339 20th Street  
Vero Beach, FL 32960

Re: Withdrawal of ECPO Incidental Take Permit Applications

Dear Mr. Williams,

We are writing to withdraw the applications for incidental take permits (ITPs) we originally submitted in 2010. We take this step reluctantly because we continue to believe strongly in the benefits of the habitat conservation plan (HCP) we developed in partnership with four leading wildlife conservation organizations.<sup>1</sup>

The HCP provides for extensive habitat preservation and management within an approximately 150,000-acre area of privately-owned land over a 50-year planning horizon. Within these private lands, the HCP would preserve over 100,000 acres of high-value, interconnected habitats located within areas otherwise open to development in order to offset potential disturbance of listed species during construction and mining activities within a 45,000-acre area of low-habitat-value lands that are currently in large-scale agricultural use.<sup>2</sup> The over 100,000 acres identified for preservation include valuable regional wildlife dispersal corridors that connect public conservation lands, including the Florida Panther National Wildlife Refuge, the Big Cypress National Preserve, Corkscrew Regional Ecosystem Watershed, and the Okaloacoochee Slough State Forest, and can support expansion of the Florida panther's range and population, as well as dispersal of other protected species. Implementation of the HCP would also generate tens of

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<sup>1</sup> Our wildlife conservation organization partners are Defenders of Wildlife, Florida Wildlife Federation, Audubon Florida, and Audubon of the Western Everglades. The ITP applications requested incidental take authorization for disturbances of federally listed species (*i.e.*, harassment of the panther and most covered species, and harm of a few, mostly ground burrowing species) caused by construction and mining activities within specified areas. We submitted our ITP applications in 2010, and at the request of Mr. David Dell, Regional HCP Coordinator, submitted updated applications in 2018.

<sup>2</sup> Although the area identified for covered activities is 45,000 acres, the area available for new covered activities under the HCP is limited to less than 40,000 acres based on the HCP's inclusion of the existing, 5,027-acre Town of Ave Maria. The "covered activities" for which incidental take coverage was sought were development of residential and commercial communities and earth mining, including excavation, grading, installing water lines and internal roads, and framing and constructing buildings. The requested ITPs would not have authorized the covered activities themselves, but instead would have authorized only unintentional take of listed species that could occur incidental to the covered activities. The applicants did not request ITP coverage for future activities of third parties, such as future occupants of residential and commercial communities within the HCP area.

millions of dollars in contributions to the Paul J. Marinelli Fund to finance additional species protection measures.

During the 12-year review process, the Service and the Eastern Collier Property Owners (ECPO) generally agreed that the extensive habitat conservation provided by the HCP would fully offset actual impacts to listed species caused by covered activities at the location and time of those activities. But some commenters raised concerns about other activities not covered by the HCP, outside of the HCP area involving third parties, and reaching an agreeable resolution of those issues has proven elusive. Specifically, commenters urged the Service to treat collisions between panthers and vehicles operated by third parties on public roadways *outside the HCP area* as effects caused by the Service's issuance of ITPs, which authorize only the disturbance *inside the HCP area* of species from covered activities. We appreciate the Service's acknowledgement that panther-vehicle mortality (PVM) involving third parties on external roadways cannot be attributed to the applicants for take liability purposes.<sup>3</sup> We remain concerned, however, about the flawed methodology proposed by the Service to model and attribute PVM for purposes of a jeopardy analysis.<sup>4</sup> Application of that methodology would have resulted in an erroneous quantification of PVM and improper attribution of effects to the ITPs, and correspondingly unreasonable permit conditions over a 50-year period, which we cannot accept.<sup>5</sup> In addition, we have previously noted that certain projects within the HCP area may need to proceed with project-specific reviews rather than face indefinite delays pending completion of the ITP and HCP review process. That point has been reached for some projects and is fast approaching for others, so proceeding with our current ITP applications is no longer tenable.

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<sup>3</sup> See, e.g., Draft Biological Opinion and Conference Opinion, Eastern Collier Multi Species Habitat Conservation Plan (March 2022) at 120-121 ("many factors influence the risk of wildlife mortality from vehicle collisions," including "adjacent habitat type, presence or absence of wildlife crossings and fencing, patterns of development, traffic levels, roadway design, vehicle speed, and driver skill and behavior," and therefore "we do not attribute take from vehicle strikes to the Applicants because they do not have sufficient direct control and the causal linkages are too remote and attenuated").

<sup>4</sup> See, e.g., Technical Memorandum, "Statistical review of Future Roadkill Estimation Method (FREM) used by US FWS South Florida Ecological Services Field Office staff," prepared by Megan D. Higgs, Ph.D., Statistics (Nov. 2020), provided to USFWS by the applicants, identifying several serious flaws in the FREM methodology, including (i) the limited technical documentation provided to support the methodology, which calls into question the development and validation of the methodology; (ii) the methodology's failure to adequately acknowledge or justify numerous assumptions, (iii) the weak, if any, statistical associations between traffic volumes and PVM, and (iv) the methodology's failure to account for and quantifiably estimate known sources of uncertainty. Even if the model were statistically valid, its proposed use would improperly attribute future PVM to an action (issuance of ITPs) that is not the factual or legal cause of PVM.

<sup>5</sup> We also disagree with the Service's conversion of our request for harassment coverage (for most species involved) into a request for harm coverage (for all species involved). We requested incidental take coverage only in the form of harassment for the Florida panther and most other covered species, and do not agree that our activities will cause harm to the panther or most of the covered species within the meaning of the Endangered Species Act and its implementing regulations. See 50 C.F.R. § 17.3 ("Harm in the definition of 'take' in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering."). We requested harm coverage only for certain federal- and state-listed ground-burrowing species (including the gopher tortoise, gopher frog, eastern indigo snake, and eastern diamondback rattlesnake) and for the Florida bonneted bat.

While we are withdrawing our ITP applications, we continue to believe that the HCP offers significant additional conservation benefits beyond those typically achieved through permitting individual projects. We also highly value the involvement of our conservation partners. Accordingly, we intend to continue working together with our conservation partners toward implementation of the tenets of the HCP as we move forward case-by-case on our individual projects. We will also consider revising and resubmitting our ITP applications in the future if warranted under the circumstances.

Sincerely,

Alico, Inc.

Half Circle L Ranch, LLP

Barron Collier Investment, Ltd.

Heller Bros. Packing Corp.

Collier Enterprises Management, Inc.

JB Ranch

Consolidated Citrus Limited Partnership

Owl Hammock Immokalee, LLC

English Brothers Partnership

Pacific Land, Ltd.

Gargiulo, Inc.

Sunniland Family Limited Partnership

cc (via email only): Leopoldo Miranda-Castro, Regional Director, USFWS Southeast Region  
John Tirpak, Deputy Assistant Regional Director of Ecological Services,  
USFWS Southeast Region

