



Wrublik, John <john_wrublik@fws.gov>

[EXTERNAL] Revised Reservation Letter Lee County Port Authority New Control Tower Project; USACE Permit SAJ-2009-01552; Service Log number: 4-1-00-F-585

1 message

Les Alderman <lesa@pantherconservation.com>

Thu, Nov 8, 2018 at 12:00 PM

To: larry_williams@fws.gov

Cc: Jim Alderman <jim@aldermanfarms.com>, Bethany Brosious <bethanyb@passarella.net>, Karen Bryant

<klbryant@fvlcpa.com>, "Cassler, Constance" <constance_cassler@fws.gov>, taelias@fvlcpa.com,

(b) (6)(b) (6)(b) (6) @usace.army.mil, john_wrublik@fws.gov

Dear Mr. Williams:

Attached, please find an electronic copy of our Revised Reservation Letter for the referenced project, so critical to the safety of the traveling public and future development of SW Florida. A hard copy follows via USPS.

Should you have any questions, please don't hesitate to call or write.

Respectfully,

Les

Leslie D. Alderman, Jr.

Founder and Managing Member

Florida Panther Conservation, LLC

P.O. Box 740631

Boynton Beach, Florida 33474

Phone: 239 633-8375

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lesa@pantherconservation.com



**FLORIDA PANTHER
CONSERVATION**

Revised Reservation letter .pdf

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FLORIDA PANTHER CONSERVATION

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FAX. 561.369.2804
WWW.PANTHERCONSERVATION.COM

November 8, 2018

Reference; Our August 3, 2018 Reservation Letter

USPS and ELECTRONIC MAIL

Larry Williams
State Supervisor
US Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960-3559

Dear Mr. Williams:

Subject: Revised Reservation Letter
Air Traffic Control Tower at RSW
USACE Permit Application No. SAJ-2009-01552
USFWS Log No. 4-1-00-F-585

This is to inform you that the Lee County Port Authority has revised the number of Panther Habitat Units (PHU) to be purchased from Florida Panther Conservation, II, LLC (FPC, II). As additional PHU will be obtained from other sources, the Port Authority now requires 205 PHU rather than the previously estimated 219 PHU from FPC, II. The PHU purchased by the Port Authority will be used to mitigate the impact to the habitat of the Florida panther caused by construction of the new Air Traffic Control Tower at Southwest Florida International Airport.

We are proud to be a small part of this important Safety upgrade, so important to all who live and work in Southwest Florida.

Please do not hesitate to contact me if you have any questions.

Respectfully,

Leslie D. Alderman, Jr.
Founder and Managing Member

CC: James Alderman
Bethany Brosious
Karen Bryant
Constance Cassler, PhD.
Tony Elias
Cynthia Ovdenk
John Wrublik

11/21/2018

DEPARTMENT OF THE INTERIOR Mail - [EXTERNAL] SWFIA ATCT (USFWS PHU Ltr w-BA) - (No. 4-1-00-F-585) - 07DMJ1710



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PASSARELLA & ASSOCIATES INC

November 9, 2018

Mr. John Wrublik
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960

RE: COE Application No. SAJ-2009-01552
USFWS Log No. 4-1-00-F-585
Southwest Florida International Airport – Air Traffic Control Tower
Project No. 07DMJ1710

Dear John:

This letter is provided in response to your e-mail request dated July 23, 2018 and as part of the ongoing project coordination with the U.S. Fish and Wildlife Service (USFWS) for the Air Traffic Control Tower (ATCT) at the Southwest Florida International Airport.

Since the submittal of the U.S. Army Corps of Engineers (COE) permit application in November 2016, proposed habitat impacts associated with the ATCT have been reduced. Proposed tree topping activity has been limited to a small area of trees located north of the proposed ATCT location. This area is comprised of forested habitat that currently, or in the future, will have trees that could block the line of sight from the ATCT to the existing airfield. Therefore, potential tree obstructions located within this area will require removal to maintain the line of sight from the ATCT to the existing runway and airfield.

To reflect the reduced impacts, a revised panther habitat unit (PHU) analysis was provided to and approved by the USFWS on July 27, 2018. Per the PHU analysis, 219 PHUs will be required to compensate for ATCT construction and tree topping related impacts.

The Lee County Port Authority (LCPA) has obtained letters of reservation for both wetland mitigation credits and PHUs. As determined through coordination with the COE, the ATCT will purchase 0.99 wetland credit from Corkscrew Regional Mitigation Bank (CRMB). This credit has an associated value of 14.06 PHUs. Additionally, 205 PHUs from Florida Panther Conservation Bank (FPCB) have been reserved by LCPA. The total number of PHUs provided for the ATCT is 219. A copy of the reservation letters from CRMB and FPCB are attached as Exhibits A and B, respectively.

Offices in Florida and South Carolina

13620 Metropolis Avenue • Suite 200 • Fort Myers, Florida 33912 • Phone: (239) 274-0067 • Fax: (239) 274-0069 • www.Passarella.net

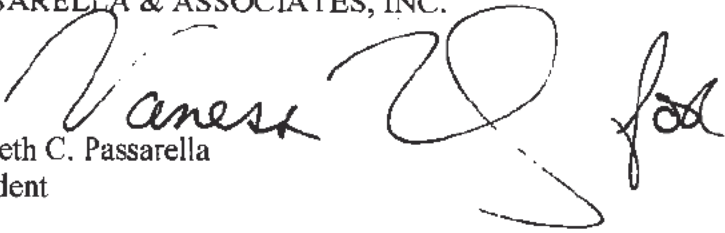
Mr. John Wrublik
November 9, 2018
Page 2

In order to assist you in your review, please find the attached updated biological information for the ATCT, including the requested cumulative effects analysis. This information is attached as Exhibit C.

Should you have any questions regarding this information, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,

PASSARELLA & ASSOCIATES, INC.


Kenneth C. Passarella
President

KCP/vv

Enclosures

cc: Alicia Dixon, w/enclosures
Joe Glowacki, w/enclosures
(b) (6)(b) (6) w/enclosures

EXHIBIT A

CRMB RESERVATION LETTER



Corkscrew

REGIONAL MITIGATION BANK

September 5, 2017

Laura Layman
South Florida Water Management District
2301 McGregor Boulevard
Fort Myers, FL 33901

(b) (6)(b) (6)

U.S. Army Corps of Engineers
1520 Royal Palm Square Blvd #310
Fort Myers, FL 33905

**RE: Letter of Credit Reservation
Freshwater Forested Wetland Mitigation Credits
Airport Traffic Control Tower at RSW
SFWMD Permit Application No. 161118-2
ACOE Permit Application No. SAJ-2009-01552**

Dear Ms. Layman and Ms. (b) (6)

This letter is to confirm that the Lee County Port Authority has reserved 0.72 State UMAM and 0.99 Federal WRAP Freshwater Forested Wetland Mitigation Credits from the Corkscrew Regional Mitigation Bank for the construction of the Airport Traffic Control Tower at RSW Project at the Southwest Florida International Airport.

The 0.99 Federal WRAP Credits also include 1.26 Kilograms of Fish and Crayfish Biomass - Short Hydroperiod and 14.06 Panther Habitat Units.

Please do not hesitate to contact me if you have any questions or need anything further.

Sincerely,

Desmond Duke

cc: Mark Fisher, LCPA
David John, Corkscrew Mitigation, LLC

EXHIBIT B

FPCB RESERVATION LETTER



FLORIDA PANTHER CONSERVATION

P.O. Box 740631
BOYNTON BEACH, FL 33474
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November 8, 2018

Reference; Our August 3, 2018 Reservation Letter

USPS and ELECTRONIC MAIL

Larry Williams
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We are proud to be a small part of this important Safety upgrade, so important to all who live and work in Southwest Florida.

Please do not hesitate to contact me if you have any questions.

Respectfully,

Leslie D. Alderman, Jr.
Founder and Managing Member

CC: James Alderman
Bethany Brosious
Karen Bryant
Constance Cassler, PhD.
Tony Elias
(b) (6)(b) (6)
John Wrublik

EXHIBIT C

BIOLOGICAL ASSESSMENT FOR THE FLORIDA PANTHER

SWFIA AIR TRAFFIC CONTROL TOWER BIOLOGICAL ASSESSMENT FOR THE FLORIDA PANTHER

November 2018

Description of the Proposed Action

The Applicant has applied for Department of the Army (DA) authorization to construct a new Air Traffic Control Tower (ATCT) with associated infrastructure and a stormwater management system at Southwest Florida International Airport (SWFIA) located in Section 30, Township 45 South, Range 26 East, Lee County (Figure 1).

A 75.70-acre (ac) (30.63 hectares [ha]) Review Area was established to aid in the review of the project area. The Review Area includes the proposed ATCT construction area and also encompasses the existing Aircraft Rescue and Firefighting Facility (ARFF) and adjacent undeveloped lands within the limits of SWFIA (Figure 2). Construction of the ATCT will directly impact 13.48 ac (5.46 ha) within the Review Area. The proposed work will require the filling of 1.99 ac (0.81 ha) of U.S. Army Corps of Engineers (Corps) jurisdictional wetlands and 0.51 ac (0.21 ha) of Corps jurisdictional waters. In addition, trees located within forested areas adjacent to the proposed ATCT location will be topped in accordance with Federal Aviation Administration (FAA) clearing criteria. These forested areas are located within the Review Area and require modification to maintain the line of sight from the ATCT to the existing airfield. In general, trees that are, or could be, blocking the line of sight from the air traffic control tower will require removal per FAA clearing criteria (Figure 2).

Compensatory mitigation for habitat impacts associated with the project will be provided through the purchase of a total of 219 Panther Habitat Units (PHUs) from the Corkscrew Regional Mitigation Bank (CRMB) and the Florida Panther Conservation Bank (FPCB).

Adverse effects to the panther and proposed compensation

The project is located within the Primary Zone (Kautz et al. 2006) of the U.S. Fish and Wildlife Service's (Service's) Panther Focus Area (Focus Area).

The 75.70 ac (30.63 ha) Review Area contains habitat types suitable for panther (*Puma concolor coryi*) feeding and dispersal; however, construction related impacts are limited to a 13.48 ac area, located in the western portion of the Review Area. The project construction footprint is comprised of undeveloped, disturbed land, the existing ARFF facility, pine flatwoods, and fallow agricultural land. The 13.48 ac of habitat proposed to be impacted for project construction provides a total of 199 PHUs (Table 1). Additionally, habitat alterations are proposed within a tree topping area adjacent to the ATCT location; the tree topping area provides 20 PHUs in the pre-tree removal condition and will provide 12 PHUs in the post-tree removal condition (Table 2).

The Applicant has proposed to compensate for impacts to panther habitat resulting from project construction by providing a total of 219 PHUs from CRMB and FPCB.

Action area

The action area is defined as all areas to be directly or indirectly affected by the Federal action and not just the immediate area involved in the action.

The project's action area is defined as all lands within the footprint of the project, and all lands located in the Service's Focus Area within 25 miles (mi) (40.2 kilometers [km]) of the project footprint (Figure 3). The 25-mile (mi) buffer around the project footprint is designed to encompass mean dispersal distance of sub-adult male panthers which was reported by Maehr et al. (2002) to be 23.2 mi (37.3 km) and by Comiskey et al. (2002) to be 24.9 mi (40.0 km). The 25-mile (40.2 km) buffer distance encompasses the dispersal distance of both male and female panthers because male panther dispersal distances are known to exceed those reported for female panthers (Maehr et al. 2002; Comiskey et al. 2002). The size of the action area for this consultation is consistent with action areas defined in our recent biological opinions for the panther, and it encompasses the wide ranging movements of sub-adult panthers and the large home territories of adult panthers.

Analysis of the species likely to be affected

The panther is a wide-ranging species that requires large areas of diverse landscape to survive. Dispersing sub-adult males wander widely through unforested and disturbed habitat. Human population in South Florida has dramatically increased, from 1 million in 1950 to 6.6 million in 2010, resulting in secondary disturbances such as increased human presence and noise, light, air, and water pollution. In Southwest Florida (Charlotte, Collier, and Lee Counties), where the reproducing panther population is primarily located, human population has increased from 833,892 in 2000 to an estimate of 1,231,100 in 2010, representing an increase of 47.6 percent over the 10-year period (University of Florida 2009). Increasing human population has resulted in increasing impacts on native habitat and flora and fauna. Resulting threats to panthers include direct effects such as human disturbance from project construction, and habitat loss and fragmentation; and indirect effects from road mortality, human disturbance following construction, and intra-specific aggression. Table 3 provides a yearly tabulation of the minimum population estimates with the annual mortalities also shown (Florida Fish and Wildlife Conservation Commission (FWCC) 2018).

ENVIRONMENTAL BASELINE

Status of the species within the action area

Current and historical radio-telemetry data, information on habitat quality, prey base, and evidence of un-collared panthers were utilized to evaluate panther use in the action area. Panther telemetry data are collected three days per week from fixed-wing aircraft, usually in early to midmorning. However, researchers have shown panthers are most active between dusk and

dawn (Beier 1995) and are typically at rest in dense ground cover during daytime monitoring flights (Land 1994). Comiskey et al. (2002) suggested that, because data is collected when panthers are least active, these locations may present an incomplete picture of activity patterns and habitat use. However, this potential bias was not detected in a recent analysis by Land et al. (2008) using GPS satellite location data collected throughout a 24-hour day. This study revealed panther habitat selection patterns are similar when using either aerial telemetry data collected during the day or 24-hour satellite GPS location data. Both methods showed upland and wetland forests were the habitats most selected by panthers. There was an indication that grassland-dry prairie habitats were used more at night than during daytime hours.

Only a subset of the panther population has been radio-collared. For example, 42 radio-collared panthers, representing about 40 percent of the estimated panther population, were monitored in 2013. However, the large database of telemetry locations taken from radio-collared panthers south of the Caloosahatchee River can be used to estimate the size and number of home ranges and travel corridors south of the Caloosahatchee River. The FWCC also uses observational data collected during telemetry flights to assess the yearly breeding activity of radio-collared panthers. Female panthers accompanied by kittens or male panthers within proximity of an adult female are assumed to have engaged in breeding activity during that year.

As of June 2018, 461 telemetry observations from 11 panthers whose current status is alive or unknown have been documented within the action area. Panthers greater than 12 years of age are not likely to still be alive based on the known longevity of panthers in the wild of 10 to 12 years (FWCC 2018). The most recent telemetry points in the action area were recorded on June 29, 2018 for panthers 224 and 252. Uncollared panthers are also presumed to occur in the action area.

Motor vehicles have affected panthers in the action area and there have been 69 documented deaths resulting from vehicle collisions within the action area (Figure 4). The closest panther casualty occurred approximately 1.7 miles (2.7 km) north of the project on May 26, 2016.

Factors affecting the species environment within the action area

Factors that affect the species environment (positively and negatively) within the action area include, but are not limited to Federal, State, or private actions and other human activities in the action area, such as: construction of highways and urban development, agriculture operations, resource extraction, public lands management (prescribed fire, public use, exotic eradication, etc.), hydrological restoration projects, and public and private land protection efforts.

Past and ongoing Federal and State actions that could affect panther habitat in the action area include the issuance of Corps permits and State of Florida Environmental Resources Permits (ERPs) authorizing the filling of wetland for development projects and other purposes. Since 1982, the Corps and the State have had a joint wetland permit application process, where all permit applications submitted are distributed to both agencies.

The land acquisition programs of Federal, State, and County resource agencies within the action area have benefited panthers by preserving and maintaining habitat. Public conservation lands

found within the action area include the Wild Turkey Strand Preserve, Spirit of the Wildlife Management Area, Okaloacoochee Slough State Forest, Corkscrew Regional Ecosystem Watershed, Picayune Strand State Forest, and the Service's Florida Panther National Wildlife Refuge.

POTENTIAL EFFECTS OF THE ACTION

This section analyzes the potential direct and indirect effects of the proposed action and interrelated and independent actions on the panther and panther habitat.

Factors to be considered

Development projects may have a number of direct and indirect effects on the panther and panther habitat. Direct effects, primarily habitat based and occurring at the time of construction, include: (1) the permanent loss of habitat for panthers and their prey; and (2) harassment of panthers due to construction activities. Indirect effects occur following the completion of the project and include: (1) increased potential for panther mortality due to motor vehicle collisions; (2) increased disturbance to panthers and their prey due to human activities; and (3) an increase in the potential for intraspecific aggression among panthers due to reduction of the geographic distribution of habitat of the panther.

The project site contains panther habitat and is located within the geographic range of the panther. The timing of construction for the project, relative to sensitive periods of the panther's lifecycle, is unknown. Panthers may be found on and adjacent to the proposed construction footprint year-round. The project will be constructed in a single, disruptive event and result in permanent loss and alteration of the existing ground cover on the project site. The time required to complete construction of the project is not known, but land clearing associated with the development will be undertaken in a single phase at the start of development activities. The disturbance associated with the project will be permanent and result in a loss of habitat currently available to the panther.

Analysis for effects of the action to the Florida Panther

The land to be affected by the project currently provides about 13.48 ac (5.46 ha) of habitat for the panther. The project site is located in the Primary Zone of the Focus Area, and within the northwestern portion of the panther's current range. The majority of the land to be impacted consists of undeveloped herbaceous and forested lands, and agricultural fields that provide habitat for the panther and its prey.

A variety of wildlife species that provide potential prey for the panther are known to occur within the action area. Potential prey include: white-tailed deer (*Odocoileus virginianus*), feral hog (*Sus scrofa*), wild turkey (*Meleagris gallopavo*), nine-banded armadillo (*Dasypus novemcinctus*), striped skunk (*Mephitis mephitis*), Eastern gray squirrel (*Sciurus carolinensis*), Eastern cottontail (*Sylvilagus floridanus*), and various species of small mammals, wading birds, amphibians, and reptiles.

Habitat assessment

The Service developed a Panther Habitat Assessment Methodology in 2003 to help guide the agency in evaluating permit applications for projects that could affect panther habitat. This methodology provided a way to assess the level of impacts to panthers expected from a given project, and to evaluate the effect of any proposed compensation offered by the project's applicant. The Habitat Assessment Methodology was updated in 2009. A full description of the Habitat Assessment Methodology can be found at: https://www.fws.gov/verobeach/Mammals/PDFs/20120924_Panther%20Habitat%20Assessment%20Method_Appendix.pdf.

The Review Area was evaluated using the Services' Panther Habitat Assessment Methodology to analyze the value of panther habitat impacted by construction of the ATCT and associated tree topping activities. Using this assessment, the 13.48 ac (5.46 ha) of impacts located within the Limits of Construction and the 2.43 ac (0.98 ha) of impacts associated with tree topping activities, will require 219 PHUs as compensation for impacts to panther habitat. The 219 PHUs will be purchased from CRMB and FPCB. The habitat compensation provided by the Applicant is consistent with the Service's panther goal to strategically locate, preserve, and restore lands containing sufficient area and appropriate land cover types to ensure the long-term survival of the panther population south of the Caloosahatchee River.

Beneficial effects

Beneficial effects are those effects of the proposed action that are completely positive, without any adverse effects to the listed species or its critical habitat. The proposed action will not result in beneficial effects to the panther.

Direct effects

Direct effects are those effects that are caused by the proposed action at the time of construction, are primarily habitat based, are reasonably certain to occur, and include: (1) the permanent loss of habitat that supports panthers and their prey and (2) harassment by construction activities.

Habitat Loss

The project will result in impacts to 13.48 ac (5.46 ha) of panther habitat in the Primary Zone. The project site also provides some habitat for panther prey species (e.g., feral hog, white-tailed deer, small mammals, etc.). Lands will be converted to land uses that are not expected to be used by panthers or their prey. The habitat lost due to the project may adversely affect the panther by decreasing the spatial extent of lands available to the panther and their prey and results in a reduction in the geographic distribution of habitat for the panther. This loss represents one-hundredth of one percent of the 1,202,699 ac (486,800 ha) of non-urban private lands available to the panther. The habitat value lost due to the project will be offset to some extent by the habitat compensation proposed by the Applicant. The compensatory mitigation is consistent with the Service's panther conservation strategy to locate, preserve, and restore lands containing sufficient area, access, and appropriate cover types to ensure the long-term survival of the panther south of the Caloosahatchee River.

Harassment by construction activities

Construction activities associated with the project, including the operation of heavy machinery during land clearing, have the potential to disturb panthers in or near the project site. The timing of construction for this project relative to sensitive periods of the panther's lifecycle is unknown; however, land clearing associated with this project will be completed in a single phase at the start of development activities and construction activities will be conducted in daylight hours. Panthers are highly mobile creatures that prefer to avoid human activities. Moreover, construction activities will not occur at night when panthers are more likely to be active. In addition, active panther den sites are not known to occur in or near the project limits. It is unlikely that the construction of the project will result in direct panther mortality, although it may result in temporary disturbance to resident or dispersing panthers.

Interrelated and interdependent actions

An interrelated activity is an activity that is part of the proposed action and depends on the proposed action for its justification. An interdependent activity is an activity that has no independent utility apart from the action under consultation. Interrelated or interdependent actions are not expected to result from the project.

Indirect effects

Indirect effects are those effects that result from the proposed action, are later in time, and are reasonably certain to occur. The indirect effects the project will have on the panther within the action area are discussed below and in the assessment of functional habitat values previously discussed. They include: (1) increased potential for panther mortality due to motor vehicle collisions; (2) increased disturbance to panthers and their prey due to human activities; and (3) an increase in the potential for intraspecific aggression among panthers due to reduction of the geographic distribution of habitat of the panther.

Risk of panther injury and mortality from motor vehicle collisions

In evaluating a project's potential to increase injuries and mortalities to panthers resulting from motor vehicle collisions, we consider the location of the project in relation to surrounding native habitats, preserved lands, and wildlife corridors that are frequently used by the panther. We also consider the current configuration and traffic patterns of surrounding roadways and the projected increase and traffic patterns expected to result from the proposed action. We evaluate the habitats present on-site, their importance in providing feeding needs for the panther and panther prey species, and if the site development would further restrict access to surrounding lands important to the panther and panther prey species.

The project will result in minor increased vehicular traffic in the project vicinity during and after construction. Ingress and egress to and from the project by vehicular traffic will be on existing roads. Panther vehicle injury and mortality was discussed in the Environmental Baseline section of this document. It is likely panther/vehicle interactions will continue to occur in the action area

during implementation of the proposed project, and it will be difficult to determine if injuries or mortalities are directly related to any minor increases resulting from the project.

Disturbance to panthers and panther prey from an increase in human activities

The construction of the project will increase human activities at the project site. However, to reduce the chance of human/panther interaction, fencing will be installed around the perimeter of the construction area. The disturbance resulting from human activities at the project site could affect the movements of panthers and panther prey species. Consequently, panthers and panther prey species may be less likely to approach the project site, or they may choose to avoid the project area altogether. The additional human activity at the project in conjunction with the loss of panther habitat resulting from the project may change panther use patterns in the project area.

Increased potential for intraspecific aggression

As discussed in the Status of the Species, panther mortalities resulting from attacks of conspecifics are known to occur in the panther population (e.g., males may kill other rival males when defending a territory). Habitat loss may increase the potential for intraspecific aggression among panthers in the action area. A total of 11 panther deaths due to intraspecific aggression have occurred within the action area. The most recent death occurred in March 22, 2017. The project will result in the loss of 13.48 ac (5.46 ha) of panther habitat. According to the current home range estimates of the panther (Lotz et al. 2005), this loss represents 0.05 percent of a female panther's average home range (29,059 ac) and 0.02 percent of a male panther's average home range (62,542 ac). As discussed above, construction of the project will result in a small increase in the spatial extent of disturbance from human activity in the project area. However, based on the amount of panther habitat lost, the project should not significantly increase the potential for intraspecific aggression in the action area.

Species response to the proposed action

The project will result in the loss of 13.48 ac (5.46 ha) of panther habitat. The project area provides habitat for panther prey and panthers are known to use the project area. The proposed action may result in increased disturbance to panthers from human activity and noise at the project site. This disturbance could occur during construction of the project and be ongoing following completion of the project due to human activities and motor vehicles on the road. Panthers may respond to the disturbance by avoiding the project area or habituating to the disturbance. Resident panthers with home ranges overlapping or in the vicinity of the project area may adjust the size and location of their ranges to account for this loss and that adjustment is anticipated to occur in concert with project construction.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local, or private actions that are reasonably certain to occur in the action area considered in this analysis. Future Federal actions

that are unrelated to the proposed action are not considered in this section because they require separate consultation under Section 7 of the Act.

Reported past and ongoing State and County actions (non-Federal) affecting panther habitat within the action area include: (1) State of Florida Development of Regional Impact (DRI) Orders; (2) Collier County Comprehensive Plan Amendments; (3) Collier County Zoning Amendments; (4) Collier County Planned Unit Developments (PUDs); (5) FDEP Permits; and (6) SFWMD ERPs. To estimate future non-Federal actions, data from recent non-Federal actions were used to project a level of development that is representative of future non-Federal actions.


Projections of non-Federal actions (i.e., cumulative effects) in the action area incorporates Florida Land Use, Cover and Forms Classification System (FLUCFCS) mapping to determine if a property may be exempt from the Federal Clean Water Act, Section 404 wetland regulatory review by the Corps. To determine if a development project would likely be exempt from regulatory review, the Consultant identified the percentage of the property site that was classified as wetland habitat based on FLUCFCS 600 series (wetland), and the 411 and 419 (hydric pine flatwood) mapping unit classifications. Projects on properties with less than five percent wetlands were considered to be exempt from the Corps' regulatory review, because impacts to wetlands could likely be avoided by project design. A comprehensive list of SFWMD applications, DRIs and PUDs from 2015 to 2018 within the action area having less than five percent wetlands on-site is included as Table 4.

From 2015 through 2018, 35 projects in the action area affecting 471.85 ac of land may have been exempt from regulatory review. Therefore, approximately 157.28 ac per year ($471.85 \text{ ac} / 3 \text{ years} = 157.28 \text{ ac}$) may be exempt from regulatory review in the action area. Based on the information, this value is representative of future yearly development likely to occur in the action area; however, many unforeseen factors can affect the rate of development in the action area. Therefore, it is difficult to forecast the rate of development as it relates to non-Federal actions in the action area with certainty. However, this estimate provides the best approximation available of future, non-Federal development actions reasonably certain to occur based on the most recent 36 months of development data. This level of development represents 1.6 percent of a female panther's average home range (29,059 ac); 0.8 percent of a male panther's average home range (62,542 ac); and 0.02 percent of the non-urban private lands at risk in the Service's panther core area (1,962,294 ac). Based on the above analysis, the loss of the habitat associated with these lands is insignificant in the short term, but may adversely impact the panther as development continues to occur.

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Table 1. Panther Habitat Unit Compensation Ledger for the ATCT Construction Limits



PANTHER COMPENSATION CALCULATOR

About

Development size (acres)	
primary/d	secondary
13.48	0
other	
0	

Compensation (acres)	
primary/d	secondary
0	0
other	
0	

(PHUs)	Comp. Required	Comp. Proposed
primary/d	198.5	0.0
secondary	0.0	0.0
other	0.0	0.0

Acreage Comp. Ratio	
0.0	
Primary Equiv. Comp Ratio	
0.0	

Primary/d impacts fully compensated?	
NO	
Secondary impacts fully compensated?	
"Other" impacts fully compensated?	

No. of Panthers: 90

Base Ratio: 2.50

Relative values	
primary/d	1.000
secondary	0.690
other	0.333

DEVELOPMENT	
Habitat Value before Project	79
Habitat Value after Project	0
Habitat Value Lost	79
Base Ratio Compensation Required	2.50
Additional Compensation Needed	199

COMPENSATION	
Habitat Value of Compensation	0
Habitat Value after Restoration	0
Restoration Lift Factor*	0.5
Final Value of Compensation	0
Additional Compensation Needed	199

*When converting Ag lands to non-forested native systems applicant gets full credit of lift

PROJECT PLANNING INFO FOR PANTHER TABLE					
Habitat Impact Acreage and Panther Units			Compensation Acreage and Panther Units.		
primary/d	secondary	other	primary/d	secondary	other
Acres	PHU	Acres	PHU	Acres	PHU
13.5	79.4	0.0	0.0	0.0	0.0


Table 1. (Continued)

PROJECT WORKSHEET		Habitat types of land to be developed (acres)			Habitat types of land after development (acres)				
Habitat Type	Assigned value	Primary Zone	Secondary Zone	Other Zone	Habitat Units	Primary Zone	Secondary Zone	Other Zone	Habitat Units
Pine forest	9.5	4.31			41				0
Hardwood-Pine	9.3				0				0
Cypress swamp	9.2				0				0
Hardwood swamp	9.2				0				0
Hardwood Forest	9				0				0
Dry prairie	6.3				0				0
Unimproved pasture	5.7	5.8			33				0
Shrub swamp/brush	5.5				0				0
Improved pasture	5.2				0				0
Cropland	4.8				0				0
Orchards/groves	4.7				0				0
Marsh/wet prairie	4.7				0				0
Savanna scrub	4.5				0				0
Exotic/Nuisance plants	3	1.65			5				0
Coastal wetlands	3	0.15			0				0
Barren/disturbed lands	3	0.54			0				0
Water	0	1.03			0				0
Urbain	0				0				0
Reservoirs*					0				0
STA*					0				0
TOTAL		13	0	0	79	13	0	0	0

COMPENSATION REQUIRED
199
Habitat Units

NOTE: The assigned value for Reservoirs and STAs varies by size, proposed future management, and their position in the landscape. See the associated methodology document for guidance on starting values and considerations.

Table 2. Panther Habitat Unit Compensation Ledger for the ATCT Tree Topping Area



PANTHER COMPENSATION CALCULATOR

About

Development size (acres)	
primary/d	secondary
2.43	0
0	0

Compensation (acres)	
primary/d	secondary
0	0
0	0

(PHUs)	Comp. Required	Comp. Proposed
primary/d	20.1	0.0
secondary	0.0	0.0
other	0.0	0.0

Acreege Comp. Ratio	0.0
Primary Equiv. Comp Ratio	0.0

Primary/d impacts fully compensated?	NO
Secondary impacts fully compensated?	
"Other" impacts fully compensated?	

Select Units
 Acres
 Hectares

No. of Panthers: 90

Base Ratio: 2.50

New Project

Relative values	
primary/d	1.000
secondary	0.690
other	0.333

DEVELOPMENT	
Habitat Value before Project	20
Habitat Value after Project	12
Habitat Value Lost	8
Base Ratio Compensation Required	2.50
	20

COMPENSATION	
Habitat Value of Compensation	0
Habitat Value after Restoration	0
Restoration Lift Factor*	0.5
Final Value of Compensation	0
Additional Compensation Needed	20

*When converting Ag lands to non-forested native systems applicant gets full credit of lift

PROJECT PLANNING INFO FOR PANTHER TABLE

Habitat Impact Acreage and Panther Units				Compensation Acreage and Panther Units.			
primary/d		secondary		primary/d		secondary	
Acres	PHU	Acres	PHU	Acres	PHU	Acres	PHU
2.4	8.0	0.0	0.0	0.0	0.0	0.0	0.0

Table 2. (Continued)

PROJECT WORKSHEET		Habitat types of land to be developed (acres)				Habitat types of land after development (acres)			
Habitat Type	Assigned value	Primary/d Zone	Secondary Zone	Other Zone	Habitat Units	Primary/d Zone	Secondary Zone	Other Zone	Habitat Units
Pine forest	9.5	2.01			19				0
Hardwood-Pine	9.3				0				0
Cypress swamp	9.2				0				0
Hardwood swamp	9.2				0				0
Hardwood Forest	9				0				0
Dry prairie	6.3				0				0
Unimproved pasture	5.7				0				0
Shrub swamp/brush	5.5				0	2.01			11
Improved pasture	5.2				0				0
Cropland	4.8				0				0
Orchards/groves	4.7				0				0
Marsh/ wet prairie	4.7				0				0
xeric scrub	4.5				0				0
Exotic/Nuisance plants	3				1	0.42			1
Coastal wetlands	3				0				0
Barren/Disturbed lands	3				0				0
Water	0				0				0
Urban	0				0				0
Reservoirs*					0				0
STA*					0				0
TOTAL		2	0	0	20	2	0	0	12

COMPENSATION REQUIRED	20
Habitat Units	

*NOTE: The assigned value for Reservoirs and STAs varies by size, proposed future management, and their position in the landscape. See the associated methodology document for guidance on starting values and considerations.

Table 3. Reported Minimum Panther Population Counts in South Florida from 2000 to 2018

Year	Total	Mortality	Net
2000	62	13	49
2001	78	11	67
2002	80	14	66
2003	87	24	63
2004	78	20	58
2005	82	12	70
2006	97	19	78
2007	117	25	92
2008	104	23	81
2009	113	24	89
2010	115	24	91
2011	111	24	87
2012	123	29	94
2013	133	29	104
2014	138	24	114
2015	140	41	99
2016	*	43	*
2017	120-230	30	90-200
2018	**	**	**

*Data unavailable per Timber Creek Biological Opinion issued September 11, 2018

**Complete data set unavailable

Table 4. Projects within the Florida Panther Action Area for the ATCT Area Having Less than Five Percent Wetlands

Name	Project Ac	Wetland Ac	Percent of Wetlands	DRI	PUD	District
Oak View RPD	16.21	0.54	3.30%		2017	
The Treeline 28 Commerce Park	58.58	1.17	2.00%		Pend	
PUBLIX ORANGETREE	9.98	0.00	0.00%			2015
LEE CO COMPLETE ST INITIATIVE TIGER GRANT 19 DANIELS PKWY	0.00	0.00	0.00%			2015
GALLERIA AT THE FORUM	7.78	0.00	0.00%			2015
AUTOZONE AT MISSION HILLS SHOPPING CENTER (PARCEL 8)	0.33	0.00	0.00%			2015
TERMINAL ACCESS ROADWAY WIDENING	38.04	0.14	0.37%			2015
S W INTERNATIONAL TRACT F-3	4.11	0.01	0.22%			2015
AVE MARIA - DEL WEBB ROAD CROSSING	1.13	0.00	0.00%			2016
C R-951 EXTENSION (WEATHERED STONE DRIVE - TORRE VISTA LANE)	4.34	0.02	0.47%			2015
GULF COAST LANDING	1.05	0.00	0.00%			2016
SHOPPES AT GRANDE OAK - LOT 2 (DUNKIN DONUTS - VALVOLINE)	0.71	0.00	0.00%			2016
ARBORWOOD AMENITY CENTER	9.03	0.00	0.00%			2016
SUNCOAST CREDIT UNION S R 80	0.06	0.00	0.00%			2015
JETPORT LOOP EXTENSION (TRACT H-5)	0.93	0.00	0.00%			2016
DANIELS R V AND BOAT STORAGE (LOT 17)	3.14	0.00	0.00%			2016
ACUMED	3.12	0.00	0.00%			2016
COLONIAL - SR 82 RETAIL	2.73	0.00	0.00%			2017
TILE IT	2.16	0.00	0.00%			2016
TREELINE DISTRIBUTION CENTER	22.10	0.00	0.00%			2016
BONITA FIRE STATION NO. 6	1.01	0.00	0.00%			2017
LOT K2 TERRASMART	3.26	0.00	0.02%			2017
SUMMIT CHURCH	2.61	0.00	0.00%			2017
TREELINE 28	36.91	1.33	3.61%			2017
ALICO FARM FIELD	108.05	1.17	1.09%			2017
H C G M BORROW PIT	97.06	1.60	1.64%			2017
CHAMPION RING ROAD EXTENSION AND SELF STORAGE UNITS	2.33	0.00	0.00%			2017
KNOTT MERIDIAN CENTER NORTH INDUSTRIAL PARCEL	15.00	0.21	1.42%			2017
TARMAC COURT LOT 1 2 AND 3	7.41	0.00	0.00%			2018
HEARTLAND DENTAL	0.21	0.00	0.00%			2017
R T MOORE	3.89	0.00	0.00%			2018

Table 4. (Continued)

Name	Project Ac	Wetland Ac	Percent of Wetlands	DRI	PUD	District
HERITAGE BAY CDD-LAKE 30 CONTROL STRUCTURE MODIFICATION	0.36	0.00	0.00%			2018
ARBOR TOWNE STORAGE	3.23	0.03	0.94%			2018
Neighborhood Shoppes At Orangetree	1.28	0.00	0.00%			2018
Collier County Corkscrew Road	3.69	0.00	0.00%			2018
Totals / Averages	471.85	6.22	1.32%			

Notes: SFWMD applications from 2015 through 2018 were acquired from the SFWMD website (http://my.sfwmd.gov/gisapps/sfwmdxwebdc/dataview.asp?query=ung_id=1128) August 2013. The SFWMD ePermitting website was then researched to determine the data for the ERPs issued from 2015 through 2018.

DRIs were acquired from the Florida Geographic Data Library website (<http://www.fgdl.org/metadataexplorer/explorer.jsp>) August 2018.

Collier PUDs were acquired from the Collier County GIS website (<http://www.colliergov.net/index.aspx?page=2713>) August 2018.

Lee PUDs were acquired from Lee County government website (<http://leegis.leegov.com/gisdata.htm>) August 2018.

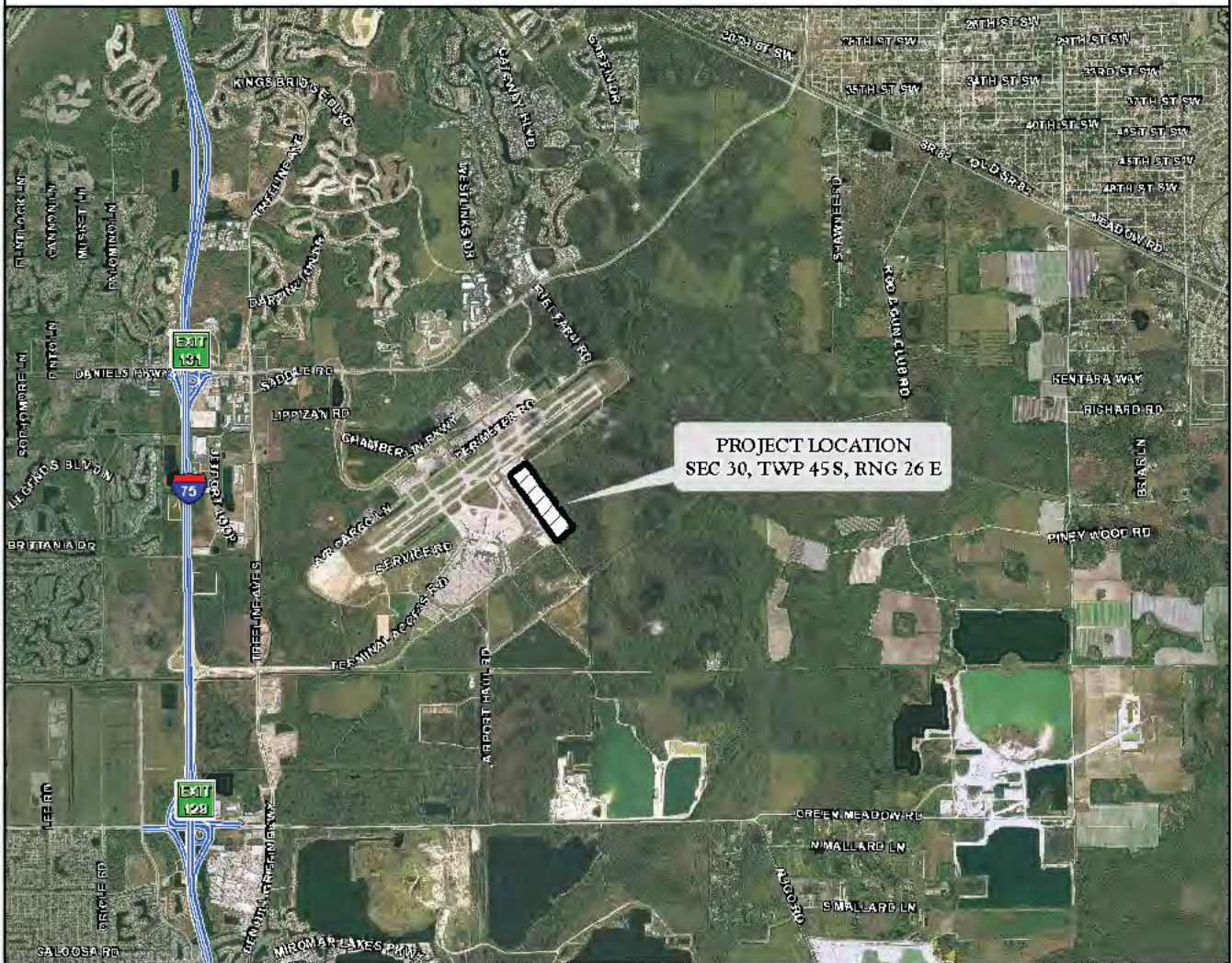
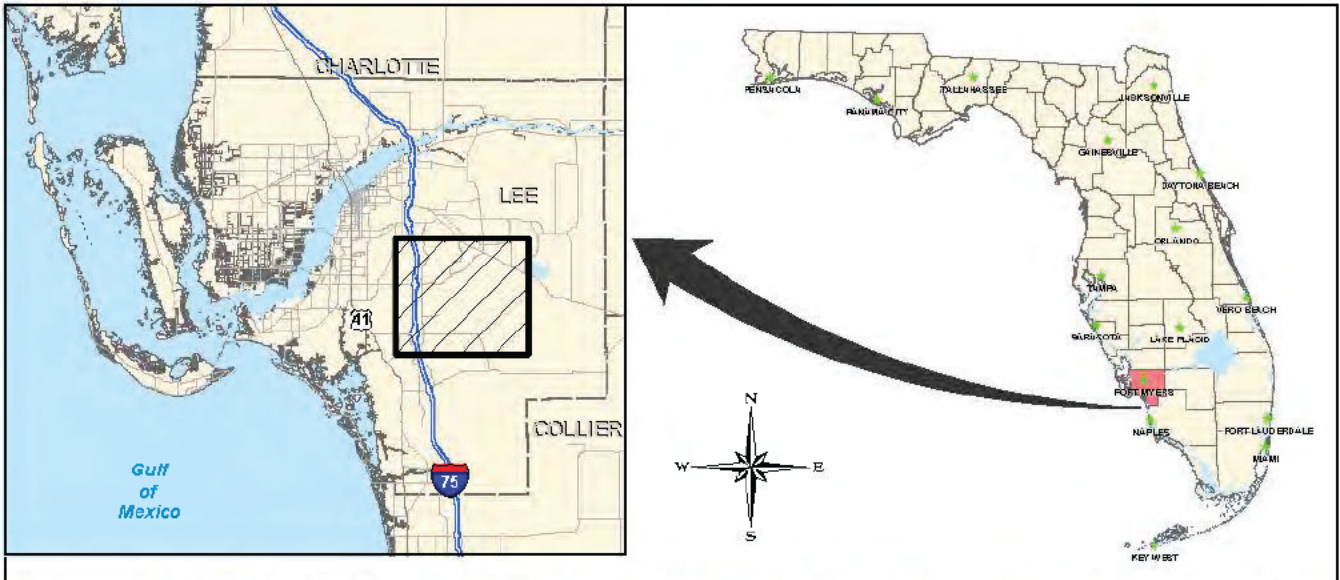


FIGURE 1. PROJECT LOCATION MAP
SOUTHWEST FLORIDA INTERNATIONAL
AIRPORT AIR TRAFFIC CONTROL TOWER

DRAWN BY	DATE
F.L., W.C.	9/4/18
REVIEWED BY	DATE
B.B.	9/4/18
REVISION	DATE





NOTES:
 AERIAL PHOTOGRAPHS WERE ACQUIRED THROUGH THE LEE COUNTY PROPERTY APPRAISER'S OFFICE WITH FLIGHT DATES OF JANUARY 2008.
 PROJECT LIMITS FROM AECOM DRAWING NO. RSW-A11CT-AREA4.DWG DATED AUGUST 1, 2016.

LEGEND:
 [Pink outline] LINE OF SIGHT TO EXISTING AIRFIELD
 [Grey fill] TREE REMOVAL AREA

DATE: 07/20/17
 SHEET: FIGURE 2

SOUTH WEST FLORIDA INTERNATIONAL AIRPORT
AIR TRAFFIC CONTROL TOWER
AERIAL WITH CONSTRUCTION LIMITS AND TREE REMOVAL AREA



13620 Metroplex Avenue
 Suite 200
 Fort Myers, Florida 33912
 Phone (239) 274-0067
 Fax (239) 274-0069

DATE: 10/19/16
 D.B. (DESIGNER)
 DATE: 10/19/16
 B.B. (CHECKER)
 DATE: 10/19/16
 B.B. (APPROVER)

Removed line of sight, updated aerials
 DATE: 7/2/18
 D.B. (DESIGNER)
 DATE: 10/19/16
 B.B. (CHECKER)
 DATE: 10/19/16
 B.B. (APPROVER)





Wrublik, John <john_wrublik@fws.gov>

Re: [EXTERNAL] RE: [Non-DoD Source] Corps App no. SAJ-2013-02704 (SP-MLB)

1 message

Wrublik, John <john_wrublik@fws.gov>

Fri, Mar 8, 2019 at 7:13 AM

To (b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6) usace.army.mil>

Thanks (b) (6),

Just one more thing. In the consultation letter for this project, the Corps made "may affect" determinations for the Florida panther, Florida bonneted bat (FBB) and wood stork. The Service finds that: the project is located outside of the focus area for the panther; the Florida bonneted bat and its calls were not found during surveys of the site; and the project will only result in the loss of a small amount of potential foraging habitat for the wood stork. Therefore I request that you change your determinations for these species from may affect to may affect, not likely to adversely affect (MANLAA) for panther, FBB and wood stork.

In addition, the Corps made a determination of MANLAA for the red-cockaded woodpecker (RCW). However, neither RCWs or their nest cavities were observed during surveys of the project site by the applicant's consultant. I request that you change your determination for the RCW from MANLAA to no effect. I'm asking for this change because the Service has been under scrutiny lately for concurring with MANLAA determinations when the species doesn't occur on the site.

If you agree to changing the determinations for the species described above, you can let me know by return email

Lastly, regarding the Corps's determination for the black rail of MANLAA. The black rail is currently proposed for listing but has not yet been listed by the Service. According to Section 7(a)(4) of the Endangered Species Act (Act)... "Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed..." The Service finds that is unlikely that the black rail occurs on the project site, and that this action is not likely to jeopardize the black rail. Moreover, the Act and its implementing regulations do not provide for concurrences for MANLAA determinations for species that are proposed for listing. Therefore, we will not be responding to the Corps's MANLAA determination for the black rail.

If you have any questions, please let me know.

Thanks John

John M. Wrublik
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960
Office: (772) 469-4282
Fax: (772) 562-4288
email: John_Wrublik@fws.gov

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On Thu, Mar 7, 2019 at 11:13 AM (b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6) usace.army.mil> wrote:

Good morning, John

Attached is the FBB Acoustic Survey as requested. Please let me know if you need anything else.

Thank you and have a good day.

(b) (6)

-----Original Message-----

From: Wrublik, John [mailto:john_wrublik@fws.gov]

Sent: Tuesday, February 19, 2019 8:53 AM

To: (b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)) (b) (6)(b) (6) @usace.army.mil>

Subject: Re: [EXTERNAL] RE: [Non-DoD Source] Corps App no. SAJ-2013-02704 (SP-MLB)

(b) (6) ,

I got a chance to review this project. I don't have enough information regarding the status of the of the Florida bonneted bat on the project site to complete our consultation at this time. Please inform the applicant and their consultant that the Service is now requesting that acoustic surveys, as well as roosting surveys, be conducted on Project sites to determine the status of the endangered Florida bonneted bat. As such, I am asking that the applicant's consultant conduct an acoustic survey (based on the Service's guidance, see attached) on the project site, and provide me a report with the results of the survey. If the consultant has any questions, they can contact me.

Thanks John

John M. Wrublik
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960
Office: (772) 469-4282
Fax: (772) 562-4288
email: John_Wrublik@fws.gov <mailto:John_Wrublik@fws.gov>

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On Thu, Feb 14, 2019 at 2:59 PM Bartley, Michelle L CIV USARMY CESAJ (USA (b) (6)(b) (6)(b) (6) @usace.army.mil <mailto:(b) (6)(b) (6)(b) (6) usace.army.mil> > wrote:

Hi John,

I've attached a FBB survey completed by the agent. If additional information is needed, please let me know and I will contact the agent.

Thank you,

(b) (6)

-----Original Message-----

From: Wrublik, John [mailto:john_wrublik@fws.gov <mailto:john_wrublik@fws.gov>]

Sent: Thursday, February 14, 2019 2:44 PM

To: (b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)) (b) (6)(b) (6) @usace.army.mil

<mailto:(b) (6)(b) (6)(b) (6) @usace.army.mil> >

Subject: Re: [EXTERNAL] RE: [Non-DoD Source] Corps App no. SAJ-2013-02704 (SP-MLB)

(b) (6)

One more question on this one, do you know if the consultant completed a survey of the project site for the Florida bonneted bat? It would have to follow the Service's guidance and include both roosting and and acoustic surveys (not just the walk around pedestrian wildlife survey that is typically done for site). If not, please inform the applicant's consultant that we are going to need this to complete our consultation on the project. Not sure if the consultant has talked to anyone from this office regarding the project. If not, they can contact me with questions.

Thanks John

John M. Wrublik
U.S. Fish and Wildlife Service
1339 20th Street

Vero Beach, Florida 32960

Office: (772) 469-4282

Fax: (772) 562-4288

email: John_Wrublik@fws.gov <mailto:John_Wrublik@fws.gov> <mailto:John_Wrublik@fws.gov>
<mailto:John_Wrublik@fws.gov> >

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On Fri, Feb 8, 2019 at 10:38 AM (b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6) @usace.army.mil <mai (b) (6)(b) (6)(b) (6) @usace.army.mil> <mailto (b) (6)(b) (6)(b) (6) usace.army.mil <mailto (b) (6)(b) (6)(b) (6) @usace.army.mil> > > wrote:

John,

Part 2 is attached.

Also, the Public Notice can be accessed at: Blockedhttps://Blockedwww.saj.usace.army.mil/Missions/Regulatory/Public-Notices/Article/1692751/saj-2013-02704-sp-mlb/ <Blockedhttp://www.saj.usace.army.mil/Missions/Regulatory/Public-Notices/Article/1692751/saj-2013-02704-sp-mlb/>

Let me know if you need anything else.

Thanks,

(b) (6)(b) (6)

-----Original Message-----

From: (b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)

Sent: Friday, February 8, 2019 10:23 AM

To: 'Wrublik, John' <john_wrublik@fws.gov <mailto:john_wrublik@fws.gov> <mailto:john_wrublik@fws.gov> <mailto:john_wrublik@fws.gov> > >

Subject: RE: [Non-DoD Source] Corps App no. SAJ-2013-02704 (SP-MLB)

Hi John,

No problem. I have to send it in two separate emails due to the file sizes. The attached is Part 1.

(b) (6)

(b) (6)(b) (6)(b) (6), Biologist
U.S. Army Corps of Engineers

(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)

(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)

(b) (6)(b) (6)(b) (6) @usace.army.mil <mai (b) (6)(b) (6)(b) (6) @usace.army.mil> <mai (b) (6)(b) (6)(b) (6) @usace.army.mil <mailto (b) (6)(b) (6)(b) (6) @usace.army.mil> >

(b) (6)(b) (6) ex (b) (6)

*NOTICE: As of October 01, 2017, the Corps will no longer accept joint applications from the Florida Department of Environmental Protection and Water Management Districts. All applications must be made via the ENG 4345 form and submitted (b) (6)(b) (6) @usace.army.mil <mai (b) (6)(b) (6) @usace.army.mil> <mailto (b) (6) @usace.army.mil <mai (b) (6)(b) (6) @usace.army.mil> > . Download the ENG 4345 application form here: Blockedhttp://Blockedwww.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/forms/Applications/Eng_Form_4345_DEC_2014.pdf <Blockedhttp://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/forms/Applications/Eng_Form_4345_DEC_2014.pdf>

Download the application checklist here: Blockedhttp://Blockedwww.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/forms/Checklists/Checklist_ENG4345fillable.pdf <Blockedhttp://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/forms/Checklists/Checklist_ENG4345fillable.pdf>

Please assist us in better serving you! Please complete the customer survey by clicking on the following link:

Blockedhttp://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey <Blockedhttp://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey>

-----Original Message-----

From: Wrublik, John [mailto:john_wrublik@fws.gov <mailto:john_wrublik@fws.gov>

<mailto:john_wrublik@fws.gov <mailto:john_wrublik@fws.gov> >]

Sent: Thursday, February 7, 2019 10:18 AM

To (b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6) @usace.army.mil

<mailto:(b) (6)(b) (6)(b) (6) @usace.army.mil> <mailto:(b) (6)(b) (6)(b) (6) @usace.army.mil <mailto:(b) (6)(b) (6)(b) (6) @usace.army.mil> > >

Subject: [Non-DoD Source] Corps App no. SAJ-2013-02704 (SP-MLB)

(b) (6) ,

I'm am acting for my supervisor Connie Cassler and was asked to expedite the Service's consultation on Corps App no. SAJ-2013-02704 (SP-MLB). I believe this project is called Gardner Sky Plex, it is a development on the Fort Myers Airport property. I think your coordination letter and public notice may have been sent to our office, but I can seem to locate it. Would you able to send me another copy? I think that there was supposed to Florida bonneted bat survey report included as well. I'm sorry to trouble you with this, I really appreciate your help.

Sincerely,

John Wrublik

John M. Wrublik
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960
Office: (772) 469-4282
Fax: (772) 562-4288

email: John_Wrublik@fws.gov <mailto:John_Wrublik@fws.gov> <mailto:John_Wrublik@fws.gov <mailto:John_Wrublik@fws.gov> > <mailto:John_Wrublik@fws.gov <mailto:John_Wrublik@fws.gov> <mailto:John_Wrublik@fws.gov> > >

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Follow us on Instagram @usfws_south_florida
Visit our web site at www.fws.gov/verobeach/

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On Mon, Sep 30, 2019 at 9:11 AM Wrublik, John <john.wrublik@fws.gov> wrote:
Connie, Larry has already directed Mark Cantrell to take the lead on this.

John

John M. Wrublik
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960
Office: (772) 469-4282
Fax: (772) 562-4288
email: John.Wrublik@fws.gov

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On Mon, Sep 30, 2019 at 9:07 AM Cassler, Constance <constance.cassler@fws.gov> wrote:
John,

Are we involved in this yet? If not how can we get involved. Is it something you would do or Mark Cantrell?

Connie

Constance L. Cassler, Ph.D.
Supervisory Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960
office: 772-469-4243
fax: 772-562-4288
email: constance.cassler@fws.gov

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----- Forwarded message -----

From: **Warren, Ken** <ken_warren@fws.gov>

Date: Mon, Sep 30, 2019 at 8:51 AM

Subject: Naples Daily News Report: Proposed toll road from Polk to Collier draws concerns from some environmental groups

To: FW4 Vero Beach SFFO <fw4_vero_beach_sffo@fws.gov>

Proposed toll road from Polk to Collier draws concerns from some environmental groups

By Patrick Riley, Naples Daily News, Sept. 30, 2019

Southwest Florida could be in line for a new toll road that would connect Polk County, south of Orlando, to Collier County. But an aggressive schedule, the potential for more sprawl and the possible fragmenting of Florida panther habitat has some environmental groups worried.

Although some see the ambitious plan as a potential driver for the local economy and a way to take pressure off existing north-south routes, others are wary of the damage they say the project could cause to wildlife and environmentally sensitive lands.

"The toll road itself is a disaster and it shouldn't be funded," said Julianne Thomas, a senior environmental planning specialist with the Conservancy of Southwest Florida.

The Multi-use Corridors of Regional Economic Significance, or M-CORES, program was born out of a bill passed during the past legislative session.

The proposed roads were a top priority of Senate President Bill Galvano, R-Bradenton, who has described the roads as a "new approach" in planning the state's future, reducing congestion, providing new evacuation routes and offering a way to "revitalize" rural communities by expanding broadband, water and sewer infrastructure.

Aside from adding a new multi-use corridor, including a toll road, from Polk to Collier, the program would expand the Suncoast Parkway from the Tampa Bay area to the Georgia border and extend the Florida Turnpike west to connect with the Suncoast Parkway. The proposals mark the biggest expansion of the state's highway system since work on Florida's Turnpike began in the mid-1950s.

Three task forces, made up of elected officials, environmentalists and other stakeholders, have been formed, one for each proposed corridor. They have been asked to make recommendations and deliver a final report to the governor and Legislature by October 2020.

"This is really a defining moment for our state....," Florida Department of Transportation Secretary Kevin Thibault said during the first meeting in August, thanking the task force members for their willingness to serve "in these critical roles."

"And these roles are essential to be able to achieve what is in front of us, a Florida that is prepared for growth and population but still protects everything that makes the Sunshine State the best in the country."

What the task forces will be asked to do

Officials from Southwest Florida are well represented on the task force for the connector from Polk to Collier, but the agency that will ultimately draw up the alignment for the roads is FDOT. For some task force members — who attended their first meeting last month in Tampa — that came as a surprise.

"They were surprised that we weren't gonna actually put pen to paper, do different routes," said Margaret Wuerstle, executive director for the Southwest Florida Regional Planning Council. She attended the first meeting and is an alternate representative for the council on the Southwest-Central Florida Connector Task Force.

Other local representatives include Naples Councilman Reg Buxton who will represent the Collier Metropolitan Planning Organization on the task force and Commissioner Penny Taylor who will represent Collier County.

The corridor task forces are charged with a variety of responsibilities, including addressing issues such as hurricane evacuation; congestion mitigation; trade and logistics; broadband, water and sewer connectivity; "autonomous, connected, shared, and electric vehicle technology"; and other transportation modes, such as shared-use non-motorized trails, freight and passenger rail, and public transit.

For the Southwest-Central Florida Connector the task force will also be asked to address the impacts of construction on panther and other critical wildlife habitat. It will be tasked with evaluating the need for acquisition of lands for state conservation or as mitigation for construction, and assessing wildlife crossing design features to protect panther and other critical wildlife habitat corridor connections.

"As we move forward we are continuing that commitment to protect and enhance Florida's wildlife corridors and all of those environmentally sensitive areas that are identified within these different corridors," Thibault said. "We're also committed to protecting and enhancing the primary springs protection zones and the farmland preservation areas."

With some "pretty outspoken" members on the task force for Southwest and Central Florida, Wuerstle said she thinks FDOT will get "a lot of pushback," if the agency makes many bad decisions.

The connector "has the potential to really change Florida" and the rural counties, and is going to have a "major impact" on Southwest Florida, Wuerstle said, in part because it would open up "new land for development."

It will be up to the task force members to know the issues and stay on top of things, she said.

"We need to watch it every step of the way," Wuerstle said.

'It's fast-tracked'

The brisk pace at which the task forces are expected to move and make their recommendations has not gone unnoticed. With the final report due in just over a year, construction would begin by the end of 2022 with the corridors open to traffic before the end of 2030.

"I will say this, it's fast-tracked," said Collier County Commission Chairman Bill McDaniel who sits on the task force as the representative for the regional planning council.

"They want their report out of the M-CORE committee by next October, within a year. So this is a take no prisoners, high impact agenda."

To McDaniel the proposed road should follow the corridors that already exist “where it’s going to have the least amount of environmental impacts for habitats.” It could follow the US 27 and US 29 corridor, he said.

“To me that makes the most plausible sense,” he said.

McDaniel said he envisions it not being “an expressway from Orlando to (Interstate 75) down through the middle of the state on a new alignment,” but rather a “toll facility that goes through segments.” A perfect segment could be from LaBelle in Hendry County to Immokalee, he said.

“You put two lanes — two new lanes — that are funded by the toll and if you don’t want to travel on the Old 29 you travel on the New 29 and then you pay the toll,” McDaniel said.

McDaniel, whose district includes Immokalee, said his goal has long been to turn the rural farming community “into the economic epicenter of Collier County.” That is done via infrastructure, he said.

“If I give manufacturers the ability to come here, import raw materials, hire my people, produce finished goods and services and then ship those finished goods and services out by road or by air, everybody wins,” McDaniel said. “And infrastructure is the key to that.”

For Immokalee, the proposed toll road could drive business to the rural but growing community and bring year-round jobs to an area that still largely depends on seasonal work, said Danny Gonzalez, president of the Immokalee Chamber of Commerce.

“It opens the door for economic development here,” said Gonzalez, who is supportive of the project and also owns Lozano’s Mini Mart and Lozano’s Mexican Restaurant in Immokalee.

The proposed road could help bring a big-box store like Walmart to Immokalee and would also benefit the town’s airport, Gonzalez said.

“It’ll help Immokalee,” he said.

To Lee County Commissioner Cecil Pendergrass, who also sits on the task force representing his county, the proposed north-south road could also give relief to I-75. The interstates were “clogged up” during Hurricane Irma two years ago and gasoline wasn’t able to get here, he said.

Pendergrass, too, agrees that expanding along existing corridors would hopefully mitigate the impact on the environment.

“Those roads are already in place,” he said.

Conservancy: toll road is 'environmentally reckless'

But for some environmental groups concerns remain.

The toll road, from what is known to date, looks to be “financially irresponsible as well as environmentally reckless,” said Thomas, who attended the August meeting for the Conservancy but does not sit on the task force.

The group doesn’t believe the road is necessary, she said.

“It’s difficult for us to conceive of a path that would be acceptable,” Thomas said. “That wouldn’t impact a huge amount of wetlands, that wouldn’t fragment Florida panther habitat, that could in any way be acceptable to our organization.”

The Conservancy is most concerned about the recovery and survival of the endangered panther and fragmenting the existing habitat “is not going to help” with that, Thomas said. The project is going to increase the possibility for vehicle-panther collisions and potentially open up areas of additional development for both commercial or residential uses, which would take even more much-needed habitat, she said.

Because the panther is considered an “umbrella species,” protecting it also would help protect other habitats for other endangered species, Thomas said. And while wildlife crossings are important, “it’s better to not build the road if it’s not necessary,” she said.

Instead of a toll road, Thomas said, the initiative should focus on hardening infrastructure, building safe hurricane shelters, creating programs to extend broadband to rural counties and connect more people to sewer — all things that are part of the goals of the M-CORES effort.

“Just because we don’t think that a toll road is good, it doesn’t mean that none of the goals of this program are good,” she said. “But what we hope is that the task force moving forward will focus on the areas of the program that do make sense for our part of the state.”

Thomas, too, noted the project’s “extremely aggressive” time frame, which she said doesn’t leave an appropriate amount of time to determine whether there is a need “and because of that we do sort of feel like they’re operating as if there’s going to be a toll road regardless of what the recommendations are.”

“That is a concern that makes it feel like it’s a done deal even if it isn’t,” she said.

Roads present challenge to conservation efforts

Another concern for some environmentalists is how a proposed road could impact the region’s hydrology.

Roads transform landscapes and are “one of the greatest challenges that we face in conservation efforts,” said Meredith Budd, Southwest Florida field representative for the Florida Wildlife Federation.

Budd, who also attended the first meeting in August, pointed to the Picayune Strand State Forest where roads are being removed as part of an effort to help restore the forest.

“If you’re thinking about roadways, they act almost as dams,” she said. “They alter hydrology, they end up conveying, you know, polluted runoff into our water, and as a state we’ve been spending billions of dollars to help to restore the Everglades.”

The Federation was among the groups opposing the bill that created the toll road proposals.

Now that it has passed and the effort is moving ahead, having experts and stakeholders on the task forces, Budd said, presents an opportunity to make sure “that these projects don’t at least undermine all of the good conservation work that we’ve done and worked for and invested heavily in over the years.”

This isn’t the first time building a north-south connector from Polk to Collier has been considered.

The newest proposal is sort of a successor to what was called the Heartland Parkway about a decade ago, said Brad Cornell, Southwest Florida policy associate for Audubon of the Western Everglades and Audubon Florida, which has a representative on the task force.

But whereas the Heartland Parkway was “basically a whole new road being dictated to us without any real planning or accommodation of good protection” of resources, water, wildlife, farms and ranches, Cornell said, in this case planning is being put first.

“I’m concerned, but I’m reassured that planning has been required up front,” he said. “And so that gives me some comfort.”

--

Ken Warren
Public Affairs Officer
U.S. Fish & Wildlife Service
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Re: [EXTERNAL] RE: Earthjustice News Groups Sue to Protect FL Panther

Wrublik, John <john_wrublik@fws.gov>

Fri 1/31/2020 2:30 PM

To: Cassler, Constance <constance_cassler@fws.gov>

OK thanks

John M. Wrublik
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960
Office: (772) 469-4282
Fax: (772) 562-4288
email: John.Wrublik@fws.gov

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From: Cassler, Constance constance_cassler@fws.gov
Sent: Friday, January 31, 2020 2:29 PM
o: Wrublik, John john_wrublik@fws.gov
Subject: Re: [EXTERNAL] RE: Earthjustice News Groups Sue to Protect FL Panther

John,

#28 under factual background does say the segment is from SR 82 to CR 80A, so it is the one I mentioned

Connie

Constance L. Cassler, Ph.D.
Supervisory Fish and Wildlife Biologist
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From: Cassler, Constance <constance_cassler@fws.gov>
Sent: Friday, January 31, 2020 2:14 PM
To: Wrublik, John <john_wrublik@fws.gov>
Subject: Fw: [EXTERNAL] RE: Earthjustice News - Groups Sue to Protect FL Panther

Hi John,

The lawsuit specifically calls out the SR 82 BO by its SAJ #, so that BO is SR 82 from Gator Slough to SR 29 SAJ-2017-01376; 2016-F-0463).

he SR 29 is only called SR 29 I only found 1 SR 29 BO on our website SR 29 from SR 82 to CR 80A 2007-CPA-0507;2007-F-1185). Do you know of any others?

Connie

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From: Hinzman, Roxanna <roxanna_hinzman@fws.gov>
Sent: Thursday, January 9, 2020 3:35 PM
To: Cassler, Constance <constance_cassler@fws.gov>; Wrublik, John <john_wrublik@fws.gov>
Subject: Fwd: [EXTERNAL] RE: Earthjustice News - Groups Sue to Protect FL Panther

FYI - looks like another one. Wanted you to know it is coming so you have max time in case you need to do records management. Stay tuned, I'll let you know more as we find out.

Thanks!
Rox

Roxanna Hinzman | Field Supervisor
U.S. Fish and Wildlife Service | South Florida Ecological Services Office

From: Williams, Larry <larry_williams@fws.gov>

Sent: Thursday, January 9, 2020 2:56 PM

To: Catherine Phillips <Catherine_Phillips@fws.gov>; Dekar, Matthew <matthew_dekar@fws.gov>; Robert Tawes <robert_tawes@fws.gov>; Heath Rauschenberger <Heath_Rauschenberger@fws.gov>; Shannon Goessling <shannon.goessling@sol.doi.gov>; Brown, Mark (ENRD) <MBrown@ENRD.USDOJ.GOV>; Mark Cantrell <mark_a_cantrell@fws.gov>; Roxanna Hinzman <Roxanna_Hinzman@fws.gov>

Subject: FW: Earthjustice News - Groups Sue to Protect FL Panther

Dear All,

We just learned about the lawsuit described below. Have not seen a NOI or anything other than this news release. We will share more when we have it.

Larry

From: Julie Hauserman [mailto:jhauserman@earthjustice.org]

Sent: Thursday, January 9, 2020 12:12 PM

To: jhauserman@earthjustice.org

Subject: Earthjustice News - Groups Sue to Protect FL Panther

Re-sending to correct date – Apologies!

Media Contacts:

Tania Galloni
Earthjustice
tgalloni@earthjustice.org
(305)-440-5434

Bonnie Malloy
Earthjustice
bmalley@earthjustice.org
(850) 681-0031

Groups Sue to Protect Endangered Florida Panthers from Road Project
Government violating federal rules that protect one of Earth's rarest creatures

To view the lawsuit, please visit [this link](#)

January 9, 2020

Tampa FL. - Earthjustice filed a federal lawsuit in Florida's Middle District today to challenge road widening projects on State Roads 29 and 82 in Collier, Lee and Hendry Counties because they would endanger our official state animal, the Florida panther.

Earthjustice is representing the Sierra Club and the Environmental Confederation of Southwest Florida in the legal case against the Florida Department of Transportation, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers.

"We know that vehicle collisions are the leading cause of death for Florida panthers – nearly 85 percent of panther deaths are on roadways," said Earthjustice Florida Managing Attorney Tania Galloni. "The State Road 29 and 82 road widening projects are in the middle of critical panther habitat. Obviously, wider roads mean cars go faster, and the danger zone panthers are forced to cross increases. That will lead to more dead panthers, something this struggling population simply cannot sustain."

Only 120-230 adult panthers remain on Earth, and Southwest Florida is their last remaining wild territory. The big cats have been on the federal endangered species list since 1967.

"We're going to court because we don't want this to be the last generation of Floridians to ever see a wild Florida panther," said Earthjustice attorney Bonnie Malloy. "We need to uphold the national environmental laws that are in place to prevent that."

The lawsuit points out that:

- The U.S. Fish and Wildlife Service's official biological opinion review failed to meaningfully analyze the potential that the 18-mile and 3.2 mile road-widening projects increase the likelihood of the panthers' extinction.
- The USFWS issued "incidental take" authorizations for both projects that allow an unlimited amount of death and injury to Florida panthers from vehicles.
- The USFWS review didn't evaluate the cumulative harm that future development in the area – spurred by new highway construction - would cause to Florida panthers.
- The USFWS failed to establish a legally-required trigger that mandates further review under the Endangered Species Act if a road project proves more deadly to panthers than anticipated.
- The Florida Department of Transportation made an indefensible decision to exempt the SR 29 project from National Environmental Policy Act review, despite the agency's conclusion that the road widening is "likely to adversely affect" the Florida panther by destroying key habitat and increasing the potential for fatal motor vehicle collisions. (The National Environmental Policy Act requires that "public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.")
- The U.S. Army Corps of Engineers improperly relied on USFWS' inadequate biological opinion when preparing an Environmental Assessment in conjunction with its issuance of a Clean Water Act dredge and fill permit for the road widening on SR 82.

"We want the Florida Department of Transportation to make sure these roadways are safe for people but without giving panthers any more deadly blows. That's why we filed this challenge," said Tim Martin, who chairs the conservation committee for Sierra Club Florida.

Earthjustice is the premier nonprofit public interest environmental law organization. We wield the power of law and the strength of partnership to protect people's health; to preserve magnificent places and wildlife; to advance clean energy; and to combat climate change. We are here because the earth needs a good lawyer.

Julie Hauserman
Earthjustice Outreach
111 South Martin Luther King, Jr. Blvd
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T: 850-681-0031
C: 850-273-2898
earthjustice.org

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twitter.com/earthjustice

Because the earth needs a good lawyer

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Re: complaint: hwy expansion project / FL panther / Sec. 7

Wrublik, John <john_wrublik@fws.gov>

Fri 1/31/2020 1:56 PM

To: Cassler, Constance <constance_cassler@fws.gov>

thanks

John M. Wrublik
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960
Office: (772) 469-4282
Fax: (772) 562-4288
email: John_Wrublik@fws.gov

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From: Cassler, Constance <constance_cassler@fws.gov>
Sent: Friday, January 31, 2020 1:53 PM
To: Wrublik, John <john_wrublik@fws.gov>
Subject: Re: complaint: hwy expansion project / FL panther / Sec. 7

Sure. Let me find the original email Roxanna sent. I'll forward it to you.

Connie

Constance L. Cassler, Ph.D.
Supervisory Fish and Wildlife Biologist
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From: Wrublik, John <john_wrublik@fws.gov>
Sent: Friday, January 31, 2020 1:43 PM
To: Cassler, Constance <constance_cassler@fws.gov>
Subject: Re: complaint: hwy expansion project / FL panther / Sec. 7

Connie, can you let me know specifically which State Road 29 and State Road 82 projects we are being sued for. I want to be able to save the emails in the appropriate electronic files.

Thanks John

John M. Wrublik
U.S. Fish and Wildlife Service
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Vero Beach, Florida 32960
Office: (772) 469-4282
Fax: (772) 562-4288
email: John_Wrublik@fws.gov

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From: Cassler, Constance <constance_cassler@fws.gov>
Sent: Friday, January 31, 2020 11:42 AM
To: Wrublik, John <john_wrublik@fws.gov>
Subject: Fw: complaint: hwy expansion project / FL panther / Sec. 7

Hi John,

I've asked for your name to be added to emails about the lawsuits.

Connie

Constance L. Cassler, Ph.D.
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From: Cassler, Constance <constance_cassler@fws.gov>

Sent: Friday, January 31, 2020 11:41 AM

To: Williams, Larry O <larry_williams@fws.gov>; Speights, Helen H <helen.speights@sol.doi.gov>; Tawes, Robert <robert_tawes@fws.gov>; Hinzman, Roxanna <roxanna_hinzman@fws.gov>; Kelso, LeeAnn <leeann_kelso@fws.gov>

Subject: Re: complaint: hwy expansion project / FL panther / Sec. 7

Can we please add John Wrublik, who was the biologist for both projects?

Thank you,

Connie

Constance L. Cassler, Ph.D.
Supervisory Fish and Wildlife Biologist
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From: Williams, Larry O <larry_williams@fws.gov>

Sent: Friday, January 31, 2020 7:38 AM

To: Speights, Helen H <helen.speights@sol.doi.gov>; Tawes, Robert <robert_tawes@fws.gov>; Hinzman, Roxanna <roxanna_hinzman@fws.gov>; Kelso, LeeAnn <leeann_kelso@fws.gov>; Progulske, Donald <Donald_Progulske@fws.gov>; Cassler, Constance <constance_cassler@fws.gov>

Subject: Re: complaint: hwy expansion project / FL panther / Sec. 7

Thanks Helen. This project is under Roxanna and Connie's supervision, so here I'm asking them to work with you to establish a timeline that keeps the response on schedule. Obviously, we need to have it prepared, coordinated with the RO, and to you and DOJ prior to March 13.

This doesn't fall under Bob Progulske's work area. Bob supervises our work on Everglades restoration. So don't feel compelled to copy him on the emails, etc.

As always, we appreciate your help with this!

Larry

From: Speights, Helen <helen.speights@sol.doi.gov>

Sent: Thursday, January 30, 2020 5:17 PM

To: Tawes, Robert <robert_tawes@fws.gov>; Williams, Larry O <larry_williams@fws.gov>; Hinzman, Roxanna <roxanna_hinzman@fws.gov>; Progulske, Donald <Donald_Progulske@fws.gov>; Kelso, LeeAnn <leeann_kelso@fws.gov>

Subject: Fwd: complaint: hwy expansion project / FL panther / Sec. 7

All,

I believe you are aware of the complaint filed by Sierra Club and the Environmental Confederation of SW FL on January 9th challenging-among other things- the FWS's BOs related to two road widening projects and their impacts on the Florida panther. See attached. I have been assigned to this case for our office. The US Attorney's Office was served on January 13th and our response is due on or around March 13th.

We will be in touch in the coming weeks to set up a call to discuss next steps. Please let me know if you have any questions in the meantime, or if there are additional folks I should include.

I look forward to working with you all.

Helen

----- Forwarded message -----

From: **Gilbert, Parks** <parks_gilbert@fws.gov>

Date: Wed, Jan 22, 2020 at 9:26 AM

Subject: complaint: hwy expansion project / FL panther / Sec. 7

To: Gary Frazer <gary_frazer@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>, Bridget Fahey <bridget_fahey@fws.gov>, Carey Galst <Carey_Galst@fws.gov>, Craig Aubrey <craig_aubrey@fws.gov>, Karen Myers <Karen_Myers@fws.gov>, Ben Thatcher <ben_thatcher@fws.gov>, Doug Laye <Doug_Laye@fws.gov>, Rebecca Finley <Shawn.Finley@sol.doi.gov>, Clinedinst, Paula (ENRD) <Paula.Clinedinst@usdoj.gov>, Helen Henry <helen.speights@sol.doi.gov>, Robert Tawes <robert_tawes@fws.gov>

All,

We received a complaint yesterday regarding highway projects in southwest FL in FL panther habitat. Sierra Club and the Environmental Confederation of SW FL are the plaintiffs; the complaint is dated 1/9/20. We, the Corps and FL DOT are parties.

There are two highway widening projects at issue - State Road 29 and State Road 82 - and the complaint alleges that both will increase traffic and development, and thereby impact the panther through increased vehicle strikes. We consulted under 7(a)(2) with FL DOT (which has the FHWA's authority under NEPA for some highway projects) in 2016 and with the Corps in 2018 to assess the

projects' impact on the panther. For State Road 29, we found that the project would have adverse impacts on the panther, but that it would not jeopardize the panther; a mitigation requirement for the project is that it must have 2 wildlife underpasses. For State Road 82, we also made a non-jeopardy determination. The Corps relied on our 2018 BiOp to issue a CWA 404 permit for the project.

The allegations against us are generally that the BiOps violate the APA and specifically:

- The BiOps draw unreasonable conclusions based on flawed analysis regarding impacts of development and habitat loss on the panther
- The BiOps do not adequately assess baseline conditions and compare them to after-construction conditions to determine impacts to the panther's likelihood of survival
- The BiOps do not adequately address cumulative impacts of development and increased traffic from the project
- The BiOps do not quantify anticipated take, allegedly giving the DOT unlimited take coverage, and it does not have a reinitiation trigger

Thank you,

Parks

Parks Gilbert
Endangered Species Act Litigation Specialist
U.S. Fish and Wildlife Service, Ecological Services Program
5275 Leesburg Pike MS:ES
Falls Church, VA 22041
703-358-1758
parks_gilbert@fws.gov

--

Helen Speights | Attorney-Advisor
Department of the Interior | Office of the Regional Solicitor
Interior Region 2 (South Atlantic-Gulf)
Interior Region 4 (Mississippi Basin)
75 Ted Turner Drive SW, Suite 304
Atlanta, GA 30303

Phone: (404) 331-5604 | Helen.Speights@sol.doi.gov

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Re: complaint: hwy expansion project / FL panther / Sec. 7

Cassler, Constance <constance_cassler@fws.gov>

Mon 2/3/2020 8:14 AM

To: Speights, Helen H <helen.speights@sol.doi.gov>; Wrublik, John <john_wrublik@fws.gov>**Cc:** Williams, Larry O <larry_williams@fws.gov>; Tawes, Robert <robert_tawes@fws.gov>; Hinzman, Roxanna <roxanna_hinzman@fws.gov>; Kelso, LeeAnn <leeann_kelso@fws.gov>

No worries. John is making sure that all of the records are ready. Just let us know what you need.

Connie

Constance L. Cassler, Ph.D.

Supervisory Fish and Wildlife Biologist

U.S. Fish and Wildlife Service

1339 20th Street

Vero Beach, Florida 32960

office: 772-469-4243

Fax: 772-562-4288

email: constance_cassler@fws.gov

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From: Speights, Helen <helen.speights@sol.doi.gov>**Sent:** Sunday, February 2, 2020 9:06 AM**To:** Cassler, Constance <constance_cassler@fws.gov>; Wrublik, John <john_wrublik@fws.gov>**Cc:** Williams, Larry O <larry_williams@fws.gov>; Tawes, Robert <robert_tawes@fws.gov>; Hinzman, Roxanna <roxanna_hinzman@fws.gov>; Kelso, LeeAnn <leeann_kelso@fws.gov>**Subject:** Re: complaint: hwy expansion project / FL panther / Sec. 7

Yes, I'm cc'ing him here. My apologies. This region(s) is new to me so I am just learning the players related to different issues. That is one of the hardest parts...

Also, assuming we will be filing an answer to the complaint on March 13, I will put together a draft later this month and circulate it for your review. I will highlight the areas containing factual allegations that require your attention. I will try to give you at least a week for your review.

Thank you and I look forward to working with you on this issue.

Helen

On Fri, Jan 31, 2020 at 11:41 AM Cassler, Constance <constance_cassler@fws.gov> wrote:

Can we please add John Wrublik, who was the biologist for both projects?

Thank you,

Connie

Constance L. Cassler, Ph.D.
Supervisory Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960
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From: Williams, Larry O <larry_williams@fws.gov>
Sent: Friday, January 31, 2020 7:38 AM
To: Speights, Helen H <helen.speights@sol.doi.gov>; Tawes, Robert <robert_tawes@fws.gov>; Hinzman, Roxanna <roxanna_hinzman@fws.gov>; Kelso, LeeAnn <leeann_kelso@fws.gov>; Progulske, Donald <Donald_Progulske@fws.gov>; Cassler, Constance <constance_cassler@fws.gov>
Subject: Re: complaint: hwy expansion project / FL panther / Sec. 7

Thanks Helen. This project is under Roxanna and Connie's supervision, so here I'm asking them to work with you to establish a timeline that keeps the response on schedule. Obviously, we need to have it prepared, coordinated with the RO, and to you and DOJ prior to March 13.

This doesn't fall under Bob Progulske's work area. Bob supervises our work on Everglades restoration. So don't feel compelled to copy him on the emails, etc.

As always, we appreciate your help with this!

Larry

From: Speights, Helen <helen.speights@sol.doi.gov>
Sent: Thursday, January 30, 2020 5:17 PM
To: Tawes, Robert <robert_tawes@fws.gov>; Williams, Larry O <larry_williams@fws.gov>; Hinzman, Roxanna <roxanna_hinzman@fws.gov>; Progulske, Donald <Donald_Progulske@fws.gov>; Kelso,

LeeAnn <leeann_kelso@fws.gov>

Subject: Fwd: complaint: hwy expansion project / FL panther / Sec. 7

All,

I believe you are aware of the complaint filed by Sierra Club and the Environmental Confederation of SW FL on January 9th challenging-among other things- the FWS's BOs related to two road widening projects and their impacts on the Florida panther. See attached. I have been assigned to this case for our office. The US Attorney's Office was served on January 13th and our response is due on or around March 13th.

We will be in touch in the coming weeks to set up a call to discuss next steps. Please let me know if you have any questions in the meantime, or if there are additional folks I should include.

I look forward to working with you all.

Helen

----- Forwarded message -----

From: Gilbert, Parks <parks_gilbert@fws.gov<mailto:parks_gilbert@fws.gov>>

Date: Wed, Jan 22, 2020 at 9:26 AM

Subject: complaint: hwy expansion project / FL panther / Sec. 7

To: Gary Frazer <gary_frazer@fws.gov<mailto:gary_frazer@fws.gov>>, Gina Shultz <Gina_Shultz@fws.gov<mailto:Gina_Shultz@fws.gov>>, Bridget Fahey <bridget_fahey@fws.gov<mailto:bridget_fahey@fws.gov>>, Carey Galst <Carey_Galst@fws.gov<mailto:Carey_Galst@fws.gov>>, Craig Aubrey <craig_aubrey@fws.gov<mailto:craig_aubrey@fws.gov>>, Karen Myers <Karen_Myers@fws.gov<mailto:Karen_Myers@fws.gov>>, Ben Thatcher <ben_thatcher@fws.gov<mailto:ben_thatcher@fws.gov>>, Doug Laye <Doug_Laye@fws.gov<mailto:Doug_Laye@fws.gov>>, Rebecca Finley <Shawn.Finley@sol.doi.gov<mailto:Shawn.Finley@sol.doi.gov>>, Clinedinst, Paula (ENRD) <Paula.Clinedinst@usdoj.gov<mailto:Paula.Clinedinst@usdoj.gov>>, Helen Henry <helen.speights@sol.doi.gov<mailto:helen.speights@sol.doi.gov>>, Robert Tawes <robert_tawes@fws.gov<mailto:robert_tawes@fws.gov>>

All,

We received a complaint yesterday regarding highway projects in southwest FL in FL panther habitat. Sierra Club and the Environmental Confederation of SW FL are the plaintiffs; the complaint is dated 1/9/20. We, the Corps and FL DOT are parties.

There are two highway widening projects at issue - State Road 29 and State Road 82 - and the complaint alleges that both will increase traffic and development, and thereby impact the panther through increased vehicle strikes. We consulted under 7(a)(2) with FL DOT (which has the FHWA's authority under NEPA for some highway projects) in 2016 and with the Corps in 2018 to assess the

projects' impact on the panther. For State Road 29, we found that the project would have adverse impacts on the panther, but that it would not jeopardize the panther; a mitigation requirement for the project is that it must have 2 wildlife underpasses. For State Road 82, we also made a non-jeopardy determination. The Corps relied on our 2018 BiOp to issue a CWA 404 permit for the project.

The allegations against us are generally that the BiOps violate the APA and specifically:

- * The BiOps draw unreasonable conclusions based on flawed analysis regarding impacts of development and habitat loss on the panther
- * The BiOps do not adequately assess baseline conditions and compare them to after-construction conditions to determine impacts to the panther's likelihood of survival
- * The BiOps do not adequately address cumulative impacts of development and increased traffic from the project
- * The BiOps do not quantify anticipated take, allegedly giving the DOT unlimited take coverage, and it does not have a reinitiation trigger

Thank you,

Parks

Parks Gilbert
Endangered Species Act Litigation Specialist
U.S. Fish and Wildlife Service, Ecological Services Program
5275 Leesburg Pike MS:ES
Falls Church, VA 22041
703-358-1758
parks_gilbert@fws.gov <mailto:parks_gilbert@fws.gov>

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Helen Speights | Attorney-Advisor

Department of the Interior | Office of the Regional Solicitor

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Helen Speights | Attorney-Advisor

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