



USFWS INFORMATION MEMORANDUM

DATE: March 2, 2021

TO: Shannon Estenoz, Principal Deputy Assistant Secretary, Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks

FROM: Martha Williams, Principal Deputy Director, Exercising the Delegated Authority of the Director

SUBJECT: Eastern Collier Property Owners Multi-Species Habitat Conservation Plan and Associated Reimbursable Agreement

I. STATEMENT OF ISSUE/KEY FACTS

The Service has worked with the Eastern Collier Property Owners (ECPO) to develop a multi-species habitat conservation plan (HCP) for at least 10 years. The HCP covers 19 threatened and endangered species, includes 12 landowners, and conserves 107,000 acres of land in eastern Collier County, Florida, as 45,000 acres are developed. Conservation benefits include establishment of the \$150 million Marinelli Fund to enhance covered species conservation, with a primary focus to secure north-south wildlife corridors, manage human impacts, and provide benefit to the Florida panther. The Marinelli Fund is not a mitigation measure for project impacts and ECPO is developing as a means, over and above HCP requirements, to enhance the conservation of threatened and endangered species, particularly Florida panther, range wide.

The Service entered into a reimbursable agreement with ECPO on June 28, 2016, to facilitate completion of the environmental review of the project. We were reimbursed \$286,827.04, in full accordance with the February 28, 2012, Director's memo "Reimbursable Agreements and Environmental Reviews for Energy Projects" and Departmental policy (Attachments 1 and 2). Reimbursable agreements under this guidance allow us to accept funds from private entities to hire term employees funded by the agreement to conduct functions not related to the issue, thus backfilling for the senior staff that can be dedicated to the complex environmental reviews requiring focused attention.

II. BACKGROUND AND FWS POSITION

ECPO initiated planning efforts with Collier County after the County's land-use plan was rejected by the State in 2008 for, in their opinion, its inadequate consideration of Florida panther conservation. ECPO encouraged and assisted the County in developing their Rural Lands Stewardship Program (RLSP) to allow for economic development in panther habitat while conserving the species. ECPO has also proactively partnered with four non-governmental organizations – Audubon of Florida, Audubon of Greater Western Everglades, Florida Wildlife Federation, and Defenders of Wildlife – to develop this HCP to implement the RLSP on a programmatic basis.



In March 2016, the Service announced scoping meetings for the Environmental Impact Statement (EIS) associated with the HCP in the *Federal Register*. We published the draft EIS and announced the availability of the HCP in the *Federal Register* in October 2018. Since the public comment period on the HCP and draft EIS ended in December 2018, we have collated public comment on the EIS and HCP, sought additional information from ECPO, negotiated revisions to the HCP in response to public comment, and drafted a non-jeopardy Biological Opinion (BO). ECPO requested the opportunity to review and provide information for the draft final EIS and the BO. In line with standard practices for any applicant and in close coordination with the Solicitor's Office, the Service shared both documents with ECPO. The Service received general comments on the BO and more specific technical comments on the traffic effects modeling in the BO from ECPO in February 2021. Throughout this entire process, the Service has maintained regular communication with ECPO.

The reimbursable agreement, like others used in the past, allowed the Service to focus senior staff expertise on the project. In the absence of such an agreement, the Service lacks the appropriated funding to dedicate the staff effort needed to complete our review consistent with the applicant's desired timeline. The Service's Planning and Consultation sub-activity, which supports staff conducting section 7 consultations and HCP reviews, has been effectively flat funded for the past 20 years, leaving Ecological Services field offices throughout the country understaffed to address their modern-day workloads in a timely fashion. The South Florida field office is particularly challenged in that regard. Other regions have used this reimbursable agreement mechanism when faced with complex, high priority, time-constrained projects and insufficient funding and staff to provide dedicated project review.

A February 28, 2012, Directors memorandum, developed in close coordination with the legal counsel from the Office of the Solicitor, authorizes such reimbursable agreements in appropriate circumstances. Before entering into this agreement with ECPO, the Service worked to ensure full compliance with established Service policy and guidance (Attachments 1 and 2), namely avoiding conflict of interest and clearly demonstrating the agreement need and purpose.

III. POSITION OF AFFECTED STAKEHOLDERS/PUBLIC LANDS AFFECTED

ECPO Applicants are seeking a strong, legally defensible decision. They have a strong conservation ethic and many of them have owned and worked the land for generations. As landowners, they are faced with the realities of making conservation and economic development work together. After 10 years of negotiation, it is unclear how much longer they will stay engaged. While ECPO has agreed in principle to the idea of management course corrections, they have significant concern that aggressive adaptive measures could impose limits on take authorization for projects, especially those proposed late in a permit term.

The Corps of Engineers is a cooperating agency in preparing the EIS for the HCP.



Audubon of Florida, Audubon of Greater Western Everglades, Florida Wildlife Federation, and Defenders of Wildlife are supportive of the HCP and have partnered with ECPO. Project opponents have criticized the project, claiming that it will jeopardize the Florida panther. There have also been recent criticisms of the reimbursable agreement with ECPO as well as an op-ed response by the applicants (Attachments 3 and 4).

IV. DISCUSSION

Environmental review for the project is nearing completion. The final draft EIS is completed, and we are finalizing the consultation process with both the Miccosukee and Seminole tribes.

The Service is working with ECPO to finalize the BO, which includes an independent scientific review by the U.S. Geological Survey (USGS) of Florida panther roadway mortality and traffic modeling. To ensure total independence, staff from the Service's Science Applications program are coordinating this review with the USGS, which is expected by April 15, 2021. Once this review is complete, we estimate six months until publication of the final Record of Decision.

The period of performance on the reimbursable agreement ended December 31, 2020.

V. TIMELINE/NEXT STEPS

No additional steps associated with the reimbursable agreement, which closed in December 2020, are needed. We are actively developing an outreach plan to counter recent false accusations leveled by project opponents and in the media at the Service. Additional criticisms are likely as we continue towards potential finalization of our Record of Decision over the next six to eight months.

Prepared by: Leopoldo Miranda-Castro, Regional Director, South Atlantic – Gulf and Mississippi Basin Unified Regions

☒ **Prepared for a meeting:** March 2, 2021 at 4:00p.m. - Paying for Permits Briefing

Does this involve, directly or tangentially, any Director's Office recusals? ☐ Yes ☒ No

Attachments